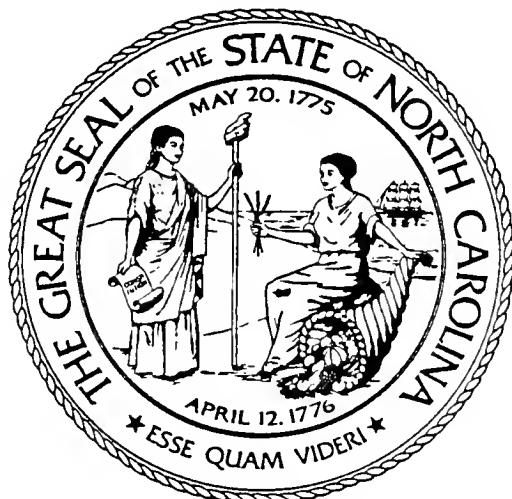


JOINT LEGISLATIVE COMMISSION ON SEAFOOD AND AQUACULTURE



REPORT TO THE
1993 GENERAL ASSEMBLY
OF NORTH CAROLINA

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NORTH CAROLINA GENERAL ASSEMBLY

December 17, 1992

TO THE MEMBERS OF THE 1993 GENERAL ASSEMBLY:

Pursuant to Section 12.1. of Part XII of Chapter 802 of the 1989 Session Laws (G.S. 120-70.60, et seq.), as amended, the Joint Legislative Commission on Seafood and Aquaculture hereby submits its report of recommendations and findings to the 1993 Regular Session of the General Assembly.

Respectfully submitted,

Senator Marc Basnight

Representative Edward David Redwine

Cochairmen

Joint Legislative Commission on Seafood and Aquaculture

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INTRODUCTION

The Joint Legislative Commission on Seafood and Aquaculture, (hereinafter the "Joint Legislative Commission") has been a permanent study commission since 1989. The authorizing legislation for the Joint Legislative Commission may be found in Art. 12F of Chapter 120 of N.C.G.S. 120-70.60, et seq. (see Appendix A). The 15 member Joint Legislative Commission is cochaired by Senator Marc Basnight of Dare County and Representative David Redwine of Brunswick County (see Appendix B). The Joint Legislative Commission filed a report to the 1992 General Assembly (Regular Session) and the Legislature enacted the following recommendations: 1) A bill to appropriate funds for the first year of a three year shellfish enhancement program; and 2) A bill to amend the General Statutes relating to shellfish leases. Details of the Joint Legislative Commission's work are available in that report, as well as previously filed reports, maintained in the Legislative Library.

The purpose of the Joint Legislative Commission is to monitor both the seafood and aquaculture industries on issues including: 1) increasing the State's production, processing and marketing; 2) creating a central permitting office; and 3) evaluating actions of boards, departments and commissions on seafood and aquaculture issues (the main focus has been the Division of Marine Fisheries of the Department of Environment, Health, and Natural Resources, the Marine Fisheries Commission, the Wildlife Resources Commission and the Department of Agriculture); (4) enacting a license to sell fish taken from coastal fishing waters including, requiring licenses, license fees, implementation and collection of fees, and use of proceeds of fees; (5) continuing to study the organizational structure of the Marine Fisheries Commission; and (6) transferring the authority to grant shellfish leases from the Marine Fisheries Commission to the Secretary of the Department of Environment, Health, and Natural Resources. It is important to note that while the Joint Legislative Commission is not

directly responsible for individual decisions made by the Division of Marine Fisheries or the Marine Fisheries Commission, it is authorized to recommend legislative changes, to the extent possible, to address problems and concerns.

The Joint Legislative Commission focused on the issues described above and held a total of six public hearings in Sunset Beach, Oriental, Beaufort, Sneads Ferry, Atlantic Beach and Raleigh as well as six meetings across the State during 1992. Speakers from all over the State were encouraged to discuss these topics as well as any other seafood issues. The Joint Legislative Commission heard from commercial fishermen, recreational fishermen, members of the Southeastern North Carolina Waterman's Association, members of the Cape Fear Atlantic Coast Conservation Association, members of the North Carolina Fisheries Association, members of the North Carolina Fisheries Association Auxiliary, the Division of Marine Fisheries of the Department of Environment, Health, and Natural Resources, the Department of Agriculture, and several aquaculture farmers. At its final meeting prior to the 1993 Legislative Session, the Joint Legislative Commission met in Raleigh, North Carolina to approve their proposed recommendations for the 1993 General Assembly. A discussion of recommendations follows.

RECOMMENDATIONS AND DISCUSSION

Recommendation 1: The Joint Legislative Commission recommends that the 1993 Session of the General Assembly enact Legislative Proposal I entitled, "AN ACT TO REQUIRE A LICENSE TO SELL FISH TAKEN FROM COASTAL FISHING WATERS."

During the six public hearings, the license to sell fish continued to be the most controversial topic before the Joint Legislative Commission. The Commission discussed the License to Sell prior to the 1991 Legislative Session (1992 Regular Session) but recommended that it continue to study the license and make final recommendations to the 1993 General Assembly. A majority of the public speakers support a license to sell. All speakers agreed that the Marine Fisheries Commission and the Division of Marine Resources lack adequate information to make decisions concerning fisheries management of the resource. Many speakers expressed concern that they were already over-regulated but felt that the license would provide valuable information needed to improve the State's data which could lead to increased stock allocations, and would ease pressure on some marine resources. Most people support a license that will provide necessary data for proper management provided that the fee is minimal and that all persons who sell fish be required to purchase the license.

Controversial provisions such as an income requirement, or limited entry were not included in the draft of the License to Sell that the Joint Legislative Commission recommends to the 1993 General Assembly. While a number of full-time commercial fishermen favored that provision, many part-time commercial fishermen and recreational fishermen saw the provision as a form of limited entry which would eliminate them.

The Joint Legislative Commission heard from Dr. Russ Nelson, Executive Director of the Florida Marine Fisheries Commission concerning Florida's Saltwater

License to Sell. The proposed North Carolina License to Sell is patterned after Florida's with one major exception. The Florida license contains a restricted species endorsement for some species where an individual must show that 25% of their income or \$5,000 comes from fishing. The endorsement is free once a person demonstrates that they qualify. The proposed North Carolina License to Sell does not have such a provision.

The Joint Legislative Commission was informed that prior to enacting a license to sell, the newly created "Information Resources Management Commission" must approve the Division's plans for the purchase and use of computers, including the cost to run the intended application. The Information Resources Management Commission requires that a "needs assessment" be prepared, and the Joint Legislative Commission instructed the Division to begin that process immediately.

The Joint Legislative Commission recommends that the 1993 General Assembly enact Legislative Proposal I -- License to Sell. In addition, the Joint Legislative Commission recommends, with the cooperation from the Marine Fisheries Commission, that public hearings be conducted on this proposed License to Sell. Comments from either the public hearings or the Information Resources Management Commission may be incorporated in the legislation during the 1993 Legislative Session. (See Legislative Proposal I for the proposed License to Sell and related information). Lastly, the Joint Legislative Commission recommends that the 1993 General Assembly appropriate \$50,850 for the 1993-94 fiscal year for start-up costs to run the license to sell. (See Legislative Proposal I-A). After the first year, the Department estimates that fees generated from the license will cover expenses related to the program.

Recommendation 2: The Joint Legislative Commission recommends that the 1993 Session of the General Assembly enact Legislative Proposal II entitled, "AN ACT TO APPROPRIATE FUNDS TO CONTINUE THE SHELLFISH ENHANCEMENT PROGRAM."

The Joint Legislative Commission recommended, and the 1992 General Assembly enacted, legislation to fund the first year of a three year shellfish enhancement research project in the amount of \$231,889. Dr. Charles Peterson, Professor of Marine Sciences, Biology, and Ecology, Institute of Marine Sciences at The University of North Carolina, presented the original proposal for the shellfish enhancement research project which will provide information necessary to help revitalize the seafood industry and increase production of oysters, bay scallops, and clams.

The Joint Legislative Commission continues to believe that the quality and quantity of naturally-grown oysters in this State has steadily declined due to water pollution, disease, and other environmental factors. Research has shown that technology has advanced to the point that a qualified aquaculturalist can produce seed oysters on demand for virtually unlimited growth and production. This is an untapped resource. In addition, seed oysters produced from hatcheries can be genetically selected for disease resistance. Much of this technology could be used in propagating oysters in privately-owned shellfish lease areas. Further research would be a significant enhancement in oyster technology.

In addition, recovery of bay scallops continues to be extremely slow following the red tide outbreak. Experts estimate that it will take more than 20 years for a full recovery at a natural rate of recovery of the bay scallops. There are few studies concerning the life cycle of bay scallops. This information is crucial in managing bay scallops. The Joint Legislative Commission supports a study in which bay scallops are transplanted from donor sites and later tested for survival.

The Joint Legislative Commission finds that while the Division of Marine Fisheries has planted clam seeds in the past, there has not been an effective method to test the results of the planting. The Joint Legislative Commission endorses a research

project which would plant clam seeds and then evaluate the bioeconomic feasibility and returns from seeding. This project would assist in obtaining crucial information to help improve the sea clam's survival rate in nature.

The Joint Legislative Commission finds that it is crucial to invest in developing aquaculture in oysters, clams, and bay scallops in order to assure a place in the seafood market.

Therefore, the Joint Legislative Commission recommends that funding for the second and third years of the shellfish enhancement project be continued as follows:

(1) For fiscal year 1993-94, the amount of \$240,149; and (2) for fiscal year 1994-95, the amount of \$127,962. (See Legislative Proposal II).

Recommendation 3: The Joint Legislative Commission recommends that the 1993 General Assembly enact Legislative Proposal III entitled, "An Act to Vest Authority in the Secretary of Environment, Health, and Natural Resources to Grant Shellfish Cultivation Leases."

This issue was referred to the Joint Legislative Commission following the 1991 Legislative Session. At present, shellfish leases must be approved by the Marine Fisheries Commission. Unfortunately, the Marine Fisheries Commission only meets four times a year. If the application is incomplete, the applicant must wait a minimum of ninety days until the Marine Fisheries Commission meets again. The Joint Legislative Commission finds that the current process of obtaining shellfish leases is extremely lengthy and unnecessary. Therefore, the Joint Legislative Commission recommends Legislative Proposal III which will transfer the authority to grant shellfish leases from the Marine Fisheries Commission to the Secretary of the Department of Environment, Health, and Natural Resources. In addition, the proposal makes changes to the Administrative Procedures Act to provide an appeals process if an applicant is not satisfied with the Secretary's decision. (See Legislative Proposal III).

Recommendation 4: The Joint Legislative Commission recommends that the 1993 General Assembly enact Legislative Proposal IV entitled, "AN ACT TO AMEND THE GENERAL STATUTES TO AUTHORIZE THE GOVERNOR TO APPOINT A SPOUSE OF A COMMERCIAL FISHERMAN TO SERVE ON THE MARINE FISHERIES COMMISSION IN THE PLACE OF THE COMMERCIAL FISHERMAN."

During a number of public hearings, the North Carolina Fisheries Association Ladies Auxiliary expressed the concerns of the commercial fishing industry at a time when the commercial fishermen could not actually be present. The Auxiliary discussed problems with commercial fishing including, water pollution, over-regulation, disease and lack of the resource. The Joint Legislative Commission finds that, although the Governor could appoint a spouse of a commercial fisherman to the Marine Fisheries Commission in a general slot, it would be beneficial for the Governor to have the option of appointing the spouse to represent the interests of the commercial fishing industry in an appointment reserved for a commercial fisherman. The Joint Legislative Commission recommends Legislative Proposal IV which authorizes the Governor to appoint the spouse of a commercial fisherman to serve on the Marine Fisheries Commission in an appointment reserved for a commercial fisherman. (See Legislative Proposal IV).

Recommendation 5: The Joint Legislative Commission recommends that the General Assembly support efforts to establish aquaculture programs to provide education and training at our colleges and community colleges.

Members of the Joint Legislative Commission recently participated in a statewide survey designed to assess the community's support to develop aquaculture training programs at our colleges and community colleges. The survey found a substantial amount of interest in having such a program. In fact, the Joint Legislative Commission was informed that many of those currently involved in aquaculture

operations received their formal training outside the State. Many others acquired their expertise "on the job." Several people spoke to the Joint Legislative Commission and said that they believed more people would get involved in aquaculture and invest the necessary capital if they had better training. The Joint Legislative Commission recommends that the colleges and community colleges develop aquaculture programs. The Joint Legislative Commission will continue to monitor progress on this issue.

Recommendation 6: The Joint Legislative Commission recommends that the General Assembly enact Legislative Proposal V to be entitled. "AN ACT TO MODIFY THE WATER COLUMN LEASES IN CHAPTER 16 OF ARTICLE 113 OF THE GENERAL STATUTES."

The Joint Legislative Commission finds that the current cost of water column leases (\$500/acre) discourages people from obtaining the leases because of the investment costs and fees. At the same time, the Joint Legislative Commission realizes that, once the water column leases are productive, a higher fee is more reasonable. Since the leases are valid for a period of five years (or the remainder of the term of their previous lease), the Joint Legislative Commission recommends that the initial fees be \$100.00 for the first three years and \$500.00 for the remainder of the initial lease. The fee for renewal leases is \$500.00. Modifications in the fees would only apply to leases entered into on or after the effective date of the legislation. (See Legislative Proposal V).

Recommendation 7: The Joint Legislative Commission recommends that the General Assembly enact Legislative Proposal VI to be entitled. "AN ACT TO AUTHORIZE THE DEPARTMENT OF AGRICULTURE TO REGULATE THE PRODUCTION AND SALE OF COMMERCIALLY RAISED FRESH WATER FISH AND FRESH WATER CRUSTACEAN SPECIES."

In 1989, the General Assembly enacted the Aquaculture Development Act to "promote and encourage the development of the State's aquacultural resources in order

to augment food supplies, expand employment, promote economic activity, increase stocks of native aquatic species, enhance commercial and recreational fishing and better use the land and water resources of the State." (G.S. 106-756). The Aquaculture Development Act states that "aquaculture" is considered "agriculture and designates the Department of Agriculture as the lead State agency in matters relating to aquaculture.

The Department of Agriculture asked the Joint Legislative Commission to recommend legislation that would transfer the regulatory authority concerning the production and sale in commercial quantities of specified fresh water fish and fresh water crustacean species from the Wildlife Resources Commission to the Department of Agriculture. The Wildlife Resources Commission appeared to support that proposal because their main goal has always been regulation of restricted species. This proposal will not affect the Wildlife Resources Commission's authority over the wild fishery resource.

The Joint Legislative Commission recommends that the General Assembly enact legislation to authorize the Department of Agriculture to regulate the production and sale of specified commercially raised fresh water fish and fresh water crustacean species.

Additional Recommendations: The Joint Legislative Commission recommends that it continue to study the following issues: 1) regulation of imported fish including size, labeling and compliance with safety inspections; 2) the effectiveness of the State's seafood marketing program; 3) proclamation authority by the Director of the Division of Marine Fisheries; 4) recreational saltwater licenses; and 5) issues raised by the Albemarle Pamlico Estuarine Study.

In addition to the Joint Legislative Commission's broad authority to study any issues relating to seafood and aquaculture, several specific issues were raised during the Joint Legislative Commission meetings that merit additional study. For example, several members questioned why the State does not enforce restrictions on imports for

size and labeling. For example, if a fish is not a flounder, it should not be named as a flounder. The Director of the Division of Marine Fisheries said that the Division and the Justice Department were reviewing this issue. On a related topic, the Joint Legislative Commission expressed concern that imported fish are not subject to the same rigorous safety inspections as local fish dealers. The Joint Legislative Commission plans to study this issue further and have presentations from the State Health Department and the Federal Food and Drug Administration.

In addition, the Joint Legislative Commission plans to continue studying: progress by the Department of Agriculture in developing new aquaculture operations, including the Department's assistance with obtaining financing and new markets for such operations; the effectiveness of the proclamation authority of the Director of the Division of Marine Fisheries; and recreational licenses.

ARTICLE 12F.

*Joint Legislative Commission on Seafood and Aquaculture.***§ 120-70.60. Committee established.**

The Joint Legislative Commission on Seafood and Aquaculture is hereby established as a permanent joint committee of the General Assembly. As used in this Article, the term "Commission" means the Joint Legislative Commission on Seafood and Aquaculture. (1989, c. 802, s. 12.1.)

Editor's Note. — Session Laws 1991, c. 135, ss. 1 and 2, provide: "Section 1. In addition to the powers and functions set forth in Article 12F of Chapter 120 of the General Statutes, the Joint Legislative Commission on Seafood and Aquaculture shall study the organizational structure of the Marine Fisheries Commission and may make recommendations to the General Assembly including, but not limited to, reorganizing or

abolishing the Commission, creating an advisory commission, and studying the relationship between the Division of Marine Fisheries of the Department of Environment, Health, and Natural Resources and the Commission

"Sec. 2 The Commission shall report its findings, together with any recommended legislation to the 1992 General Assembly."

§ 120-70.61. Membership; cochairmen; vacancies; quorum.

The Joint Legislative Commission on Seafood and Aquaculture shall consist of 15 members: four Senators appointed by the President Pro Tempore of the Senate; four Representatives appointed by the Speaker of the House of Representatives; four members appointed by the Governor; and three members appointed by the Commissioner of Agriculture. The members shall serve at the pleasure of their appointing officer. The President Pro Tempore of the Senate shall designate one Senator to serve as cochairman and the Speaker of the House of Representatives shall designate one Representative to serve as cochairman. Vacancies occurring on the Commission shall be filled in the same manner as initial appointments. A quorum of the Commission shall consist of eight members. (1989, c. 802, s. 12.1; 1991, c. 689, s. 184.1.)

§120-70.62

ART. 12F SEAFOOD AQUACULTURE

§120-70.62

Editor's Note. — Session Laws 1991, c. 689, s. 353 is a severability clause.

Effect of Amendments. — The 1991 amendment, effective July 1, 1991, sub-

stituted "15" for "four"; substituted "four" for "three" in three places; substituted "three" for "two"; and substituted "eight" for "six".

§ 120-70.62. Powers and duties.

The Commission shall have the following powers and duties:

- (1) To monitor and study the current seafood industry in North Carolina including studies of the feasibility of increasing the State's production, processing, and marketing of seafood;
- (2) To study the potential for increasing the role of aquaculture in all regions of the State;
- (3) To evaluate the feasibility of creating a central permitting office for fishing and aquaculture matters;
- (4) To evaluate actions of the Marine Fisheries Division of the Department of Environment, Health, and Natural Resources, the Wildlife Resources Commission of the Department of Environment, Health, and Natural Resources and of any other board, commission, department, or agency of the State or local government as such actions relate to the seafood and aquaculture industries;
- (5) To make recommendations regarding regulatory matters relating to the seafood and aquaculture industries including, but not limited to:
 - a. Increasing the State's representation and decision-making ability by dividing the State between the Atlantic and South Atlantic regions of the National Division of Marine Fisheries; and
 - b. Evaluating the necessity to substantially increase penalties for trespass and theft of shellfish and other aquaculture products;
- (6) To review and evaluate changes in federal law and regulations, relevant court decisions, and changes in technology affecting the seafood and aquaculture industries;
- (7) To review existing and proposed State law and rules affecting the seafood and aquaculture industries and to determine whether any modification of law or rules is in the public interest;
- (8) To make reports and recommendations, including draft legislation, to the General Assembly from time to time as to any matter relating to the powers and duties set out in this section; and
- (9) To undertake such additional studies as it deems appropriate or as may from time to time be requested by the President of the Senate, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, either house of the General Assembly, the Legislative Research Commission, or the Joint Legislative Commission on Governmental Operations, and to make such reports and recommendations to the General Assembly regarding such studies as it deems appropriate. (1989, c. 802, s. 12.1.)

§120-70.63

CH 120 GENERAL ASSEMBLY

§120-70.70

§ 120-70.63. Additional powers.

The Commission, while in the discharge of official duties, may exercise all the powers of a joint committee of the General Assembly provided for under the provisions of G.S. 120-19, and G.S. 120-19.1 through G.S. 120-19.4. The Commission may meet at any time upon the call of either cochairman, whether or not the General Assembly is in session. The Commission may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission. (1989, c. 802, s. 12.1.)

§ 120-70.64. Compensation and expenses of members.

Members of the Commission shall receive per diem and travel allowances in accordance with G.S. 120-3.1 for members who are legislators, and shall receive compensation and per diem and travel allowances in accordance with G.S. 138-5 for members who are not legislators. (1989, c. 802, s. 12.1.)

§ 120-70.65. Staffing.

The Legislative Administrative Officer shall assign as staff to the Commission professional employees of the General Assembly, as approved by the Legislative Services Commission. Clerical staff shall be assigned to the Commission through the Offices of the Supervisor of Clerks of the Senate and Supervisor of Clerks of the House of Representatives. The expenses of employment of clerical staff shall be borne by the Commission. (1989, c. 802, s. 12.1.)

§ 120-70.66. Funding.

From funds available to the General Assembly, the Legislative Services Commission shall allocate monies to fund the Joint Legislative Commission on Seafood and Aquaculture. (1989, c. 802, s. 12.1.)

§§ 120-70.67 through 120-70.69: Reserved for future codification purposes.

ARTICLE 12G.*Commission on the Family.***§ 120-70.70. Commission established.**

The Commission on the Family is hereby established as a permanent commission. As used in this Article, the term "Commission" means the Commission on the Family. (1989, c. 802, s. 10.1.)

APPENDIX A

GENERAL ASSEMBLY OF NORTH CAROLINA
1991 SESSION
RATIFIED BILL

CHAPTER 135
HOUSE BILL 570

AN ACT TO STUDY THE ORGANIZATIONAL STRUCTURE OF THE MARINE FISHERIES COMMISSION AND THE DIVISION OF MARINE FISHERIES OF THE DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES.

The General Assembly of North Carolina enacts:

Section 1. In addition to the powers and functions set forth in § 12F of Chapter 120 of the General Statutes, the Joint Legislative Commission on Seafood and Aquaculture shall study the organizational structure of the Marine Fisheries Commission and may make recommendations to the General Assembly including, but not limited to, reorganizing or abolishing the Commission, creating an advisory commission, and studying the relationship between the Division of Marine Fisheries of the Department of Environment, Health, and Natural Resources and the Commission.

Sec. 2. The Commission shall report its findings, together with recommended legislation to the 1992 General Assembly.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 27th May, 1991.

JAMES C. GARDNER

James C. Gardner
President of the Senate

DANIEL BLUE, JR.

Daniel Blue, Jr.
Speaker of the House of Representatives

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1991

H

2

HOUSE BILL 1032
Committee Substitute Favorable 5/15/91

Short Title: Shellfish Lease Authority.

(Public)

Sponsors:

Referred to:

April 19, 1991

A BILL TO BE ENTITLED

AN ACT TO STUDY THE AUTHORITY VESTED IN THE MARINE FISHERIES
COMMISSION TO GRANT SHELLFISH LEASES AND WHETHER THAT
AUTHORITY SHOULD BE TRANSFERRED TO THE SECRETARY OF THE
DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL
RESOURCES.

The General Assembly of North Carolina enacts:

Section 1. In addition to the powers and functions set forth in Article 12F of Chapter 120 of the General Statutes, the Joint Legislative Commission on Seafood and Aquaculture shall study the authority vested in the Marine Fisheries Commission to grant shellfish leases and whether that authority should be transferred to the Secretary of the Department of Environment, Health, and Natural Resources.

Sec. 2. The Commission may report to the 1992 General Assembly, and shall report on the first day the 1993 Legislative Session commences on its findings, together with any recommended legislation.

Sec. 3. This act is effective upon ratification.

APPENDIX A

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1991

H

HOUSE BILL 1105
Committee Substitute Favorable 5/14/91

Short Title: Marine Fisheries License To Sell. (P)

Sponsors:

Referred to:

April 24, 1991

1 A BILL TO BE ENTITLED
2 AN ACT TO STUDY WHETHER THE STATE SHOULD REQUIRE A LIC
3 TO SELL FISH TAKEN FROM COASTAL FISHING WATERS.
4 The General Assembly of North Carolina enacts:
5 Section 1. In addition to the powers and functions set forth in A
6 12F of Chapter 120 of the General Statutes, the Joint Legislative Commis
7 Seafood and Aquaculture shall study whether the state should require a license
8 fish taken from coastal fishing waters and shall make recommendations t
9 General Assembly including, but not limited to, requiring licenses, license
10 implementation and collection of fees, and use of proceeds from fees.
11 Commission shall report its findings and recommendations to the 1992 G
12 Assembly.
13 Sec. 2. This act is effective upon ratification.

APPENDIX B

JOINT LEGISLATIVE COMMISSION ON SEAFOOD AND AQUACULTURE MEMBERSHIP - 1991-1992

Members:

President Pro Tempore's Appointments

Sen. Marc Basnight, Cochair
P.O. Box 1025
Manteo, NC 27954
(919) 473-3474

Sen. J. Richard Conder
P.O. Box 1627
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(919) 997-5551

Sen. Beverly Perdue
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Sen. Robert G. Shaw
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Greensboro, NC 27419
(919) 855-7533

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Mr. James H. Carson, Jr.
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Dr. John D. Costlow
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Mr. J. M. Holleman
6016 Bedfordshire Drive
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(919) 733-2578

Speaker's Appointments

Rep. E. David Redwine, Cochair
P.O. Box 283
Shallotte, NC 28459
(919) 579-2169

Rep. Howard B. Chapin
212 Smaw Road
Washington, NC 27889
(919) 946-3480

Rep. Robert Grady
107 Jean Circle
Jacksonville, NC 28540
(919) 455-9359

Rep. Ronald L. Smith
P.O. Box 3091
Atlantic Beach, NC 28512
(919) 726-7933

Commissioner of Agriculture's Appointments

Mr. M. N. "Tom" Caroon
Route 1, Box 352
Oriental, NC 28571
(919) 249-1042

Rep. Vernon G. James
Route 4, Box 251
Elizabeth City, NC 27909
(919) 330-4394

Rep. Raymond M. Thompson
P.O. Box 351
Edenton, NC 27932
(919) 482-2226

Clerk:

Ms. Ann Jordan
(919) 733-5821

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

DRAFT

FOR REVIEW ONLY

S/H

D

SEAFOOD/LICENSE 012/12.93
THIS IS A DRAFT 29-DEC-92 12:45:28

Short Title: Marine Fisheries License to Sell. (Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO REQUIRE A LICENSE TO SELL FISH TAKEN FROM COASTAL
3 FISHING WATERS AND TO AMEND OTHER MARINE FISHERIES STATUTES.
4 The General Assembly of North Carolina enacts:
5 Section 1. Article 14 of Chapter 113 of the General
6 Statutes is amended by adding a new section to read:
7 "s 113-154.1. License to sell fish.
8 (a) License Requirements. -- Except as otherwise provided in
9 this section, it is unlawful for any person who takes or lands
10 any species of fish under the authority of the Marine Fisheries
11 Commission from coastal fishing waters by any means whatever,
12 including aquaculture operations, to sell, offer for sale, barter
13 or exchange for merchandise such fish, without having first
14 procured a current and valid individual license to sell fish. It
15 is unlawful for fish dealers to buy fish unless the seller
16 presents a current and valid license to sell at the time of the
17 transaction. Any subsequent sale of fish shall be subject to the
18 licensing requirements of fish dealers under G.S. 113-156.
19 (b) Fees. -- The annual fee for a license to sell fish for a
20 resident of this State is thirty-five dollars (\$35.00) and for a
21 nonresident of this State two hundred fifty dollars (\$250.00) or
22 an amount equal to the nonresident fee charged by the
23 nonresident's state, whichever is greater. The license shall be
24 valid for the period July 1 through June 30 of a given year. A

1 replacement license to sell fish may be issued by the Marine
2 Fisheries Commission for a lost or destroyed license upon receipt
3 of a proper application together with a five dollar (\$5.00) fee.

4 (c) License Format. -- The format of the license shall include
5 the name of the licensee, date of birth, social security number,
6 expiration date of the license and any other information the
7 Division deems necessary to accomplish the purposes of this
8 Subchapter. The license shall be issued on a card made of hard
9 plastic or metal capable of being used to make imprints of the
10 sale or transaction.

11 (d) Application for License. -- An application for issuance or
12 renewal of a license to sell shall be filed with the Morehead
13 City offices of the Division of Marine Fisheries or license
14 agents authorized to sell licenses under this Article. An
15 application shall be accompanied by the fee established in
16 subsection (b) of this section. Applications shall not be
17 accepted from persons ineligible to hold a license issued by the
18 Marine Fisheries Commission, including any applicant whose
19 license is suspended or revoked on the date of the application.
20 The applicant shall be provided with a copy of the application
21 marked received. The copy shall serve as the license to sell,
22 until the license issued by the Division is received or the
23 Division determines that the applicant is ineligible to hold a
24 license. In addition to the information required in subsection
25 (c) of this section, the applicant shall disclose on the
26 application a valid address, and each license issued by the
27 Commission to the applicant or any business owned in whole or in
28 part by the applicant, that is suspended or revoked on the date
29 of the application and such other information as the Division may
30 require.

31 (e) Application for Replacement License. -- A replacement
32 license shall only be obtained from the Morehead City offices of
33 the Division of Marine Fisheries. The Division shall not accept
34 an application for a replacement license unless the Division
35 determines that the applicant's current license has not been
36 suspended or revoked. A copy of an application duly filed with
37 the Division shall serve as the license until the replacement
38 license has been received.

39 (f) Sale of Fish. -- It is unlawful for any person licensed
40 under this section to sell fish taken outside the territorial
41 waters of North Carolina or to sell fish taken from coastal
42 fishing waters except to:

43 (1) fish dealers licensed under G.S. 113-156; or

1 (2) the public, if the seller is also licensed as a
2 fish dealer under G.S. 113-156.

3 (g) Recordkeeping Requirements. -- The fish dealer shall
4 record each transaction on a form provided by the Department.
5 The transaction form shall include the information on the license
6 to sell of the seller, the quantity of the fish, the identity of
7 the fish dealer, and such other information as the Division deems
8 necessary to accomplish the purposes of this Subchapter. The
9 person who records the transaction shall provide a completed copy
10 of the transaction form to the Department, and to the other party
11 of the transaction. The Department copy of each transaction from
12 the preceding month shall be transmitted to the Department by the
13 fish dealer on or before the 10th day of the following month.

14 (h) License Nontransferable. -- A license to sell fish issued
15 under this section is nontransferable. It is unlawful to use a
16 license to sell issued to another person in the sale or attempted
17 sale of fish or for a licensee to lend or transfer a license to
18 sell with the following two exceptions: (1) An individual under
19 the age of 16 may sell fish under the license of a relative or
20 guardian; and a license may be transferred within a single
21 fishing operation if the person to whom it is transferred is a
22 U.S. citizen. It is unlawful for a licensee to lend or transfer
23 a license to sell for the purpose of circumventing the
24 requirements of this section.

25 (i) Penalties. -- Any person who violates any provision of
26 this section or any rule by the Marine Fisheries Commission to
27 implement this section is guilty of a misdemeanor.

28 (1) A violation of subsection (a), (f) or (h) or a rule
29 of the Marine Fisheries Commission implementing
30 those any of those subsections is a misdemeanor
31 punishable as follows:

32 i. For a first conviction, a fine of not less
33 than fifty dollars (\$50.00) or double the
34 value of the fish which are the subject of the
35 transaction, whichever is greater, not to
36 exceed two hundred fifty dollars (\$250.00), or
37 imprisonment not to exceed 30 days.

38 ii. For a second conviction within three years, a
39 fine of not less than two hundred fifty
40 dollars (\$250.00) or double the value of the
41 fish which are the subject of the transaction,
42 whichever is greater, not to exceed five
43 hundred dollars (\$500.00), or imprisonment not
44 to exceed 90 days, or both.

1 iii. For a third or subsequent conviction within
2 three years, a fine of not less than five
3 hundred dollars (\$500.00) or double the value
4 of the fish which are the subject of the
5 transaction, whichever is greater, or
6 imprisonment not to exceed six months, or
7 both.

8 (2) A violation of any other provision of this section
9 other than subsections (a), (f) or (h), or of any
10 rule of the Marine Fisheries Commission other than
11 a rule implementing subsections (a), (f) or (h), is
12 punishable under G.S. 113-135(a).

13 (j) Proceeds of Sale. -- Income received by the State from the
14 sale of licenses to sell fish under G.S. 113-154.1 shall be used
15 to defray the costs of the fisheries data information system of
16 the Division of Marine Fisheries and for new or expanded marine
17 fisheries programs or research projects which enhance knowledge
18 of and use of marine and estuarine resources. The fisheries data
19 information system operated by the Division of Marine Fisheries
20 or its contract agent shall be used to compile fisheries data in
21 conjunction with the licensing program established in this
22 section."

23 Sec. 2. G.S. 113-152(a) reads as rewritten:

24 "(a) The following vessels are subject to the licensing
25 requirements of this section:

26 (1) All vessels engaged in commercial fishing
27 operations in coastal fishing waters;

28 (2) All North Carolina vessels engaged in commercial
29 fishing operations without the State which result
30 in landing and selling fish in North Carolina.
31 North Carolina vessels are those which have their
32 primary situs in North Carolina. Motorboats with
33 North Carolina numbers under the provisions of
34 Chapter 75A of the General Statutes are deemed to
35 have their primary situs in North Carolina:
36 documented vessels which list a North Carolina port
37 as home port are deemed to have their primary situs
38 in North Carolina; and

39 (3) All nonresident vessels engaged in commercial
40 fishing operations within the State or engaged in
41 commercial fishing operations without the State
42 that result in landing and selling fish in North
43 Carolina.

1 "Commercial fishing operations" are all operations preparatory
2 to, during, and subsequent to the taking of fish:

3 (1) With the use of commercial fishing equipment; or
4 (2) By any means, if a primary purpose of the taking is
5 to sell the fish.

6 Commercial fishing operations also includes taking people fishing
7 for hire.

8 It is unlawful for the owner of a vessel subject to licensing
9 requirements to permit it to engage in commercial fishing
10 operations without having first procured the appropriate licenses
11 including vessel, gear, or other license required by the
12 Commission. It is unlawful for anyone to command such a vessel
13 engaged in commercial fishing operations without complying with
14 the provisions of this section and of rules made under the
15 authority of this Article. It is unlawful for anyone to command
16 such a vessel engaged in commercial fishing operations that does
17 not meet the license requirements of this Article or of rules
18 made under the authority of the Article, or without making
19 reasonably certain that all persons on board are in compliance
20 with the provisions of this Article and rules made under the
21 authority of this Article. It is unlawful to participate in any
22 commercial fishing operation in connection with which there is a
23 vessel subject to licensing requirements not meeting the
24 licensing requirements under the provisions of this Article or of
25 rules made under the authority of this Article.

26 Nothing in this section shall require the licensing of any
27 vessel used solely for oystering, scalloping, or clamming by a
28 person not required to have an oyster, scallop, and clam license
29 under the provisions of G.S. 113-154. Spears or gigs shall not be
30 deemed commercial fishing equipment unless used in an operation
31 the purpose of which is the taking of fish for commercial
32 purposes."

33 Sec. 3. G.S. 113-153 reads as rewritten:

34 "§ 113-153. Vessels fishing beyond territorial waters.

35 (a) Persons aboard vessels not having their primary situs in
36 North Carolina which are carrying a cargo of fish taken outside
37 the waters of North Carolina may land ~~and sell~~ their catch in
38 North Carolina by complying with the licensing provisions of G.S.
39 113-152 with respect to the vessel in question. The Marine
40 Fisheries Commission may by rule modify the licensing procedure
41 set out in G.S. 113-152 in order to devise an efficient and
42 convenient procedure for licensing out-of-state vessels after
43 landing in order to permit sale of cargo. Provided, that persons
44 aboard vessels having a primary situs in a jurisdiction that

1 would allow North Carolina vessels without restriction to land
2 ~~and sell~~ their catch, taken outside such jurisdiction, may land
3 ~~and sell~~ their catch in North Carolina without complying with
4 this section if such persons are in possession of a valid license
5 from their state of residence.

6 (b) It is unlawful for a person aboard a vessel not having a
7 primary situs in North Carolina to sell fish taken in a fishing
8 operation involving the vessel without first having procured a
9 license to sell fish under G.S. 113-154.1. An out-of-state
10 vessel must comply with G.S. 113-152 in order to be eligible for
11 a license to sell fish under G.S. 113-154.1."

12 Sec. 4. G.S. 113-154 reads as rewritten:

13 "s 113-154. Oyster, scallop and clam Shellfish and crab licenses.
14 (a) In addition to all other license requirements, every
15 individual engaged in taking oysters, scallops, or clams It is
16 unlawful for an individual to take shellfish or crabs from the
17 public or private grounds of North Carolina by mechanical means
18 or for commercial use by any means whatever must have without
19 having first procured an individual oyster, scallops, and clam
20 shellfish and crab license.

21 (b) It is unlawful for any individual to take oysters,
22 scallops, or clams shellfish or crabs for commercial use from the
23 public or private grounds of North Carolina without having ready
24 at hand for inspection a current and valid oyster, scallop, and
25 clam shellfish and crab license issued to him personally and
26 bearing his correct name and address. It is unlawful for any such
27 individual taking or possessing freshly taken oysters, scallops,
28 or clams shellfish or crabs to refuse to exhibit his license upon
29 the request of an officer authorized to enforce the fishing laws.

30 (c) Oyster, scallop, and clam Shellfish and crab licenses are
31 issued annually on a fiscal year basis upon payment of a fee of
32 four dollars (\$4.00) fifteen dollars (\$15.00) upon proof that the
33 license applicant is a resident of North Carolina: Provided, that
34 persons under 16 years of age are exempt from the license
35 requirements of this section if they are accompanied by their
36 parent or guardian who is in compliance with the requirements of
37 this section or if they have in their possession their parent's
38 or guardian's oyster, scallop, and clam shellfish and crab
39 license.

40 (d) In the event an individual possessing an oyster, scallop,
41 and clam a shellfish and crab license changes his name or address
42 or receives one erroneous in this respect, he must within 30 days
43 surrender the license for one bearing the correct name and
44 address. An individual prosecuted for failure to possess a valid

1 license is exonerated if he can show that the invalidity
2 consisted solely of an incorrect name or address appearing in a
3 license to which he was lawfully entitled and that the erroneous
4 condition had not existed for longer than 30 days.

5 (e) It is unlawful for an individual issued an oyster, scallop,
6 and clam a shellfish and crab license to transfer or offer to
7 transfer his license, either temporarily or permanently, to
8 another. It is unlawful for an individual to secure or attempt to
9 secure an oyster, scallop, or clam a shellfish and crab license
10 from a source not authorized by the Marine Fisheries Commission."

11 Sec. 5. G.S. 113-156 reads as rewritten:

12 "§ 113-156. Licenses for fish dealers.

13 (a) License Requirement. -- Except as otherwise provided in

14 this Article, every person who sells fish or has any connection

15 whatever with fish that results in his enrichment is a fish

16 dealer, provided that individual employees of fish dealer's are

17 not fish dealer's merely by virtue of transacting the business of

18 their employers. section, it is unlawful for any person involved

19 in a fishing operation not licensed pursuant to this section:

20 (1) to buy fish for resale from any person involved in

21 a coastal fishing operation that takes any species

22 of fish under the authority of the Marine Fisheries

23 Commission from coastal fishing waters. For

24 purposes of this subdivision, a retailer who

25 purchases fish from a fish dealer shall not be

26 liable if the fish dealer has not complied with the

27 licensing requirements of this act;

28 (2) to sell fish to the public subject to the licensing

29 requirements of G.S. 113-153(b); or

30 (3) to sell to the public any species of fish under the

31 authority of the Marine Fisheries Commission taken

32 from coastal fishing waters by that coastal fishing

33 operation.

34 Any person subject to the licensing requirements of this section

35 is a fish dealer. Any person subject to the licensing

36 requirements of this section shall obtain a separate license or

37 set of licenses for each location conducting activities required

38 to be licensed under this section.

39 (b) Exceptions to License Requirements. -- The Marine

40 Fisheries Commission may make reasonable rules to implement this

41 section by clarifying the status of particular classes of persons

42 as regards fish dealerships. subsection including rules to

43 clarify the status of the listed classes of exempted persons,

44 require submission of statistical data and require that records

1 be kept in order to establish compliance with this section. Any
2 person not licensed pursuant to this section is exempt from the
3 licensing requirements of this section if all fish handled within
4 any particular licensing category meet one or more of the
5 following requirements:

6 ~~Persons all of whose dealings with a category of fish fall under~~
7 ~~one or more of the following headings are not fish dealers as~~
8 ~~respects that category.~~

9 (1) ~~Persons~~ The fish are sold by persons whose dealings
10 in fish are primarily educational, scientific, or
11 official. Scientific, educational, or official
12 agencies official, and who have been issued a
13 permit by the Division that authorizes the
14 educational, scientific, or official agency to ~~may~~
15 sell fish harvested or processed in connection with
16 research or demonstration projects projects;
17 without being deemed dealers, but such sales are
18 subject to such reasonable rules as the Marine
19 Fisheries Commission may make governing such sales.

20 (2) Individuals selling legally acquired fish other
21 than oysters and clams to individuals other than
22 dealers on a casual, noncommercial basis, provided
23 that such sales do not net in excess of five
24 hundred dollars (\$500.00) in cash or equivalent
25 value in any 12-month period. Any public offer to
26 sell, or peddling of fish, is deemed commercial.

27 (3) Fishermen who sell their catch exclusively to fish
28 dealers licensed under this section if the fish
29 taken by any fisherman meets one of the following
30 requirements:

31 a. The fish were taken lawfully in coastal
32 fishing waters other than through the use of a
33 vessel licensed under G.S. 113-152, and the
34 value of such fish sold does not exceed five
35 hundred dollars (\$500.00) in any 12-month
36 period.

37 b. The fish were taken in a commercial fishing
38 operation meeting all licensing requirements,
39 and he was a party to the operation.

40 c. The fish were taken by him, whether by sports
41 or commercial methods, through the use of a
42 vessel currently and validly licensed under
43 G.S. 113-152.

1 d. The fish were taken by him in inland fishing
2 waters in conformity with the laws and rules
3 administered by the Wildlife Resources
4 Commission and are of a type permitted to be
5 sold by the Wildlife Resources Commission.

6 e. The fish taken were oysters, scallops, or
7 clams and the person satisfies the dealer that
8 he took them or participated in the taking,
9 that he then had a current and valid oyster,
10 scallop, and clam license issued to him
11 personally, and that they were taken lawfully.

12 (c) Every fish dealer is subject to the licensing requirements
13 of this section unless all fish handled within any particular
14 licensing category meet one or more of the following
15 requirements:

16 (2) The fish are sold by individual employees of fish
17 dealers when transacting the business of their duly
18 licensed employer;

19 (1) (3) The fish are shipped to him a person by a
20 dealer from without the State. State;

21 (2) The fish are nongame fish taken in inland fishing
22 waters.

23 (3) (4) The fish are of a kind the sale of which is
24 regulated exclusively by the Wildlife
25 Resources Commission. Commission; or

26 (4) (5) The fish are purchased from a licensed dealer.
27 dealer.

28 In the event the seller is a licensed fish dealer, he must
29 satisfy any purchasing fish dealer, whether licensed or
30 unlicensed, that the fish were acquired in conformity with law.
31 It is unlawful for a fish dealer to purchase or sell or in any
32 manner deal in fish except in conformity with the provisions of
33 this section.

34 (d) Every fish dealer subject to the licensing provisions of
35 this section must secure a separate license or set of licenses
36 for each established location.

37 (e) (c) Fees. -- Every fish dealer subject to licensing
38 requirements must secure an annual license at each established
39 location for each of the following activities transacted there,
40 upon payment of the fee set out:

41 (1) Dealing in oysters:

42 a. Oyster shucker-packer (including sale of shell
43 stock), one hundred dollars (\$100.00).

1 b. Oyster shell stock shipper, fifty dollars
2 (\$50.00).
3 (2) Dealing in scallops:
4 a. Scallop shucker-packer (including sale of
5 shell stock), one hundred dollars (\$100.00).
6 b. Scallop shell stock shipper, fifty dollars
7 (\$50.00).
8 (3) Dealing in clams:
9 a. Clam shucker-packer (including sale of shell
10 stock), one hundred dollars (\$100.00).
11 b. Clam shell stock shipper, fifty dollars
12 (\$50.00).
13 (4) Dealing in hard and soft crabs:
14 a. Crab processor (including dealing in
15 unprocessed crabs), one hundred dollars
16 (\$100.00).
17 b. Unprocessed crab dealer, fifty dollars
18 (\$50.00).
19 (5) Dealing in shrimp:
20 a. Shrimp processor (including dealing in
21 unprocessed shrimp), one hundred dollars
22 (\$100.00).
23 b. Unprocessed shrimp dealer, fifty dollars
24 (\$50.00).
25 (6) Dealing in finfish:
26 a. Finfish processor (including dealing in
27 unprocessed finfish), one hundred dollars
28 (\$100.00).
29 b. Unprocessed finfish dealer, fifty dollars
30 (\$50.00).
31 (7) Operating menhaden processing plant, one hundred
32 dollars (\$100.00).
33 (8) Operating any other fish-dehydrating or
34 oil-extracting plant, fifty dollars (\$50.00).
35 Any person subject to fish-dealer licensing requirements who
36 deals in fish not included in the above categories must secure a
37 finfish dealer license. The Marine Fisheries Commission may make
38 reasonable rules implementing and clarifying the dealer
39 categories of this subsection.
40 (d) License Format. -- The format of the license shall include
41 the name of the licensee, date of birth, social security number,
42 name and address of each business location, expiration date of
43 the license and any other information the Division deems
44 necessary to accomplish the purposes of this Subchapter.

1 (e) Application for License. -- An application for a fish
2 dealer's license shall be filed with the Morehead City offices of
3 the Division of Marine Fisheries. An application shall be
4 accompanied by the fee established in subsection (c) of this
5 section. Applications shall not be accepted from persons
6 ineligible to hold a license issued by the Marine Fisheries
7 Commission, including any applicant whose license is suspended or
8 revoked on the date of the application. The applicant shall be
9 provided with a copy of the application marked received. The
10 copy shall serve as the fish dealer's license until the license
11 issued by the Division is received or the Division determines
12 that the applicant is ineligible to hold a license. Where a
13 dealer an applicant does not have an established location for
14 transacting the fisheries business within the State, the license
15 application must be denied unless the applicant satisfies the
16 Secretary that his residence, or some other office or address,
17 within the State, is a suitable substitute for an established
18 location and that records kept in connection with licensing,
19 sale, and tax purchase requirements will be available for
20 inspection when necessary. Fish dealers' licenses are issued on a
21 fiscal year basis upon payment of a fee as set forth herein upon
22 proof, satisfactory to the Secretary, that the license applicant
23 is a resident of North Carolina.

24 (f) Application for Replacement License. -- A replacement
25 license shall only be obtained from the Morehead City offices of
26 the Division of Marine Fisheries. The Division shall not accept
27 an application for a replacement license unless the Division
28 determines that the applicant's current license has not been
29 suspended or revoked. A copy of an application duly filed with
30 the Division shall serve as the license until the replacement
31 license has been received.

32 (g) Purchase and Sale of Fish. -- It is unlawful for a fish
33 dealer to buy fish unless the seller possesses a current and
34 valid license to sell and the dealer records the transaction on a
35 form provided by the Department consistent with the recording
36 requirements of G.S. 113-154.1. It is unlawful for a fish dealer
37 to possess or sell fish taken from coastal fishing waters in
38 violation of this Subchapter or the rules adopted by the Marine
39 Fisheries Commission implementing this Subchapter.

40 (h) License Nontransferable. -- Any fish dealer license issued
41 under this section is nontransferable. It is unlawful to use a
42 fish dealer license issued to another person in the sale or
43 attempted sale of fish or for a licensee to lend or transfer a

1 fish dealer license for the purpose of circumventing the
2 requirements of this section.

3 (i) Penalties. -- Any person who violates any provision of
4 this section or any rule by the Marine Fisheries Commission to
5 implement this section is guilty of a misdemeanor.

6 (1) A violation of subsection (a), (g) or (h) or a rule
7 of the Marine Fisheries Commission implementing
8 those any of those subsections is a misdemeanor
9 punishable as follows:

10 i. For a first conviction, a fine of not less
11 than fifty dollars (\$50.00) or double the
12 value of the fish which are the subject of the
13 transaction, whichever is greater, not to
14 exceed two hundred fifty dollars (\$250.00), or
15 imprisonment not to exceed 30 days.

16 ii. For a second conviction within three years, a
17 fine of not less than two hundred fifty
18 dollars (\$250.00) or double the value of the
19 fish which are the subject of the transaction,
20 whichever is greater, not to exceed five
21 hundred dollars (\$500.00), or imprisonment not
22 to exceed 90 days, or both.

23 iii. For a third or subsequent conviction within
24 three years, a fine of not less than five
25 hundred dollars (\$500.00) or double the value
26 of the fish which are the subject of the
27 transaction, whichever is greater, or
28 imprisonment not to exceed six months, or
29 both.

30 (2) A violation of any other provision of this section
31 other than subsections (a), (g) or (h), or of any
32 rule of the Marine Fisheries Commission other than
33 a rule implementing subsections (a), (g) or (h), is
34 punishable under G.S. 113-135(a).

35 Sec. 6. G.S. 113-161 reads as rewritten:

36 "S 113-161. Nonresidents reciprocal agreements.

37 Persons who are not residents of North Carolina are not
38 entitled to obtain licenses under the provisions of G.S. 113-152
39 or G.S. 154.1 except as hereinafter provided. Residents of
40 jurisdictions which sell commercial fishing licenses to North
41 Carolina residents are entitled to North Carolina commercial
42 fishing licenses under the provisions of G.S. 113-152 or G.S.
43 154.1. Such licenses may be restricted in terms of area, gear and
44 fishery by the commission Marine Fisheries Commission so that the

1 nonresidents are licensed to engage in North Carolina fisheries
2 on the same or similar terms that North Carolina residents can be
3 licensed to engage in the fisheries of such other jurisdiction.
4 The Secretary may enter into such reciprocal agreements with
5 other jurisdictions as are necessary to allow nonresidents to
6 obtain commercial fishing licenses in North Carolina subject to
7 the foregoing provisions."

8 Sec. 7. Article 15 of Chapter 113 is amended by adding
9 a new section to read:

10 "S 113-168. Combined Fisheries License. The Marine Fisheries
11 Commission may adopt rules to authorize the Division to issue a
12 consolidated license of two or more of the required individual
13 licenses under this Article. The fee for each individual license
14 issued issued through the combined license shall be paid when the
15 application for the combined license is submitted."

16 Sec. 8. G.S. 113-129(14) reads as rewritten:

17 "(14) Shellfish. -- Mollusca, specifically including
18 oysters, clams, mussels, and scallops.
19 scallops, conchs and whelks.'"

20 Sec. 9. The Marine Fisheries may use such powers as may
21 be reasonably necessary to accomplish the purposes of this act.
22 The Marine Fisheries Commission shall report to the Joint
23 Legislative Commission on Seafood and Aquaculture on its progress
24 toward implementation of the combined fisheries license set forth
25 in Section 7 of this bill and on the license to sell established
26 by this act by October 1, 1993.

27 Sec. 10. This act becomes effective upon ratification,
28 except any new or increased fees for licenses are applicable to
29 licenses that become effective on July 1, 1993.

DRAFT FOR REVIEW ONLY

Legislative Proposal I-A

GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 1993

D

93-RD-020
THIS IS A DRAFT 29-DEC-92 12:41:10

Short Title: Funds/License to Sell. (Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO APPROPRIATE FUNDS TO THE SECRETARY OF THE DEPARTMENT OF
3 ENVIRONMENT, HEALTH, AND NATURAL RESOURCES FOR START-UP COSTS
4 FOR A LICENSE TO SELL FISH.

5 The General Assembly of North Carolina enacts:

6 Section 1. There is appropriated from the General Fund
7 to the Department of Environment, Health, and Natural Resources
8 the sum of fifty thousand eight hundred and fifty dollars
9 (\$50,850) for the 1993-94 fiscal year to provide start-up costs
10 for the fisheries data information system established through the
11 license to sell saltwater fish taken from coastal fishing waters.

12 Sec. 2. This act becomes effective July 1, 1993.



NORTH CAROLINA GENERAL ASSEMBLY

December 29, 1992

TO: Members of the Joint Legislative Study Commission on Seafood and Aquaculture and interested parties

FROM: Sherri Evans-Stanton, Commission Counsel

RE: Summary of License to Sell Draft As Recommended by the Study Commission

Following is a detailed summary of the License to Sell legislation as recommended by the Joint Legislative Study Commission on Seafood and Aquaculture.

Sec. 1 - G.S. 113-154.1. **License to sell fish.** This section establishes the License to Sell Fish. The draft has been divided into subsections described as follows:

(a) **License Requirements:** This subsection requires any person who takes or lands any species of fish under the authority of the Marine Fisheries Commission to purchase a license to sell and requires that fish dealers only buy fish from licensed persons.

(b) **Fees:** The fee for residents is \$35.00; and the fee for nonresidents is \$250.00 or an amount equal to the nonresident fee charged by the nonresident's state, whichever is greater.

(c) **License Format:** This subsection specifies the format of the license (name of licensee, date of birth, SSN, expiration date of license, and any other information the Division deems necessary to accomplish the purposes of this Subchapter). The license shall be issued on a card capable of being used to make imprints of the sale or transaction.

(d) **Application for License:** An application for a license can be made with either the Division of Marine Fisheries or authorized license agents. The information contained in the application as well as the procedure for persons ineligible to hold a license are described.

(e) **Application for Replacement License:** Replacement Licenses may only be obtained from the Division in Morehead City upon verification that the applicant's current license has not been suspended or revoked.

(f) **Sale of Fish:** A person holding a license to sell can only sell to: (1) licensed fish dealers; or (2) the public, if the seller is a licensed fish dealer.

(g) **Recordkeeping Requirements:** This subsection requires the fish dealer to record each transaction on a form provided by the Department. Fish Dealers must provide a completed copy of the transaction form on or before the 10th day of the following month.

(h) **License Nontransferable:** The License to Sell is nontransferable with two exceptions: 1) an individual under 16 may sell fish under the license of a guardian or relative; and 2) a license may be transferred within a single fishing operation if the person to whom it is transferred is a U.S. citizen.

(i) **Penalties:** Penalties with respect to the license requirements, sale of fish, or nontransferability of the license are set forth on pages 3-4 of the draft. Violations of all other subsections (which are not as serious as the ones described above) are punishable under the current General Penalties Statute (G.S. 113-135(a)).

(j) **Proceeds of Sale:** The proceeds would be used to defray the costs of the fisheries data information system and for new or expanded marine fisheries programs or research projects which enhance knowledge and use of marine and estuarine resources.

Sec. 2 - G.S. 113-153. Vessels fishing beyond territorial waters. Out-of-state vessels must purchase a license to sell fish taken in a fishing operation involving the vessel.

Sec. 3 - G.S. 113-154. Oyster, scallop and clam licenses. The name of this license has been changed to "shellfish license" and the annual fee increased from \$4.00 to \$15.00. The shellfish and crab license is only available to North Carolina residents (this was the law under the old name).

Sec. 4 - G.S. 113-156. Licenses for fish dealers. The fish dealer statute has been rearranged with subheadings to be easier to follow and to be consistent with the license to sell fish. The subsections are described below:

(a) **License Requirement:** It is unlawful for any person involved in a fishing operation not licensed to: (1) buy fish for resale from a person that takes fish from coastal fishing waters (NOTE: a retailer who buys fish from a fish dealer will not be liable if the fish dealer has not complied with the licensing requirements); (2) sell fish from an out-of-state vessel to the public; or (3) sell to the public fish taken from coastal fishing waters by that coastal fishing operation.

(b) **Exceptions to Fish Dealer License Requirements:** The following categories are exempt from the license:

- (1) Persons whose dealings in fish are primarily educational, scientific, or official;
- (2) Individual employees of fish dealers;
- (3) Out-of-State persons who ship fish to dealer;
- (4) Fish regulated exclusively by Wildlife Resources Commission; or
- (5) Fish purchased from licensed dealer.

(c) **Fees (Unchanged from existing law)**

(d) License Format; (e) Application for License; and (f) Application for Replacement License - These subsections are almost identical to (c), (d), and (e) of License to Sell, except fish dealer licenses will continue to only be available from the Division.

(g) Purchase and Sale of Fish: A fish dealer cannot buy fish from a person unless that person presents a license and the dealer records the transaction.

(h) The penalties section is similar to section (i) under the license to sell.

Section 7 of the draft authorizes the Commission to issue a consolidated license of two or more of the required individual licenses under this Article.

Section 9 directs the Commission to report to the Joint Legislative Commission on Seafood and Aquaculture on the progress of a consolidated license and on the license to sell by October 1, 1993.

In Legislative Proposal I-A, the Joint Legislative Commission recommended that \$50,850 be appropriated to the Department of Environment, Health, and Natural Resources for start-up costs of the fisheries data information system established by the license to sell.

DRAFT
FOR REVIEW ONLY

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

S/H

D

S/H 93-RD-001
THIS IS A DRAFT 30-OCT-92 10:43:34

Short Title: CONTINUE SHELLFISH ENHANCEMENT FUNDS. (PUBLIC)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO APPROPRIATE FUNDS TO CONTINUE THE SHELLFISH ENHANCEMENT
3 PROGRAM.

4 Whereas, the quality and quantity of naturally-grown
5 oysters, bay scallops, and clams have steadily declined due to
6 disease, pollution, and overfishing; and

7 Whereas, marine resources play a crucial role in this
8 State's economic growth; and

9 Whereas, this shellfish enhancement program is a
10 continuation of a crucial three-year research project designed to
11 provide technological and scientific evaluation of fisheries
12 management practices in order to reverse the demise of the
13 shellfish industry; Now, therefore,

14 The General Assembly of North Carolina enacts:

15 Section 1. (a) There is appropriated from the General
16 Fund to the Board of Governors of The University of North
17 Carolina the sum of two hundred forty thousand one hundred forty-
18 nine dollars (\$240,149) for the 1993-94 fiscal year and the sum
19 of one hundred twenty-seven thousand nine hundred sixty two
20 dollars (\$127,962) for the 1994-95 fiscal year for the
21 Cooperative Institute for Fisheries Oceanography to operate a
22 shellfish enhancement program. Funds appropriated under this
23 section may be used for personnel and administrative costs.

1 (b) In the event across-the-board cuts are requested in
2 the budget of The University of North Carolina, funds
3 appropriated for the shellfish enhancement program shall not be
4 reduced or otherwise effected.

5 Sec. 2. This act becomes effective July 1, 1993.

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SESSION 1993

S/H

D

Shellfish Lease Authority (93.2)
THIS IS A DRAFT 3-DEC-92 16:58:42

Short Title: Shellfish Lease Authority. (Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO VEST AUTHORITY IN THE SECRETARY OF ENVIRONMENT, HEALTH,
3 AND NATURAL RESOURCES TO GRANT SHELLFISH CULTIVATION LEASES.
4 The General Assembly of North Carolina enacts:
5 Section 1. G.S. 113-202 reads as rewritten:
6 "§ 113-202. New and renewal leases for shellfish cultivation;
7 termination of leases issued prior to January 1, 1966.
8 (a) To increase the use of suitable areas underlying coastal
9 fishing waters for the production of shellfish, the ~~Marine~~
10 ~~Fisheries Commission Secretary~~ may grant shellfish cultivation
11 leases to persons who reside in North Carolina under the terms of
12 this section when it ~~the Secretary determines that~~ the public
13 interest will benefit from issuance of the lease. Suitable areas
14 for the production of shellfish shall meet the following minimum
15 standards:
16 (1) The area leased must be suitable for the
17 cultivation and harvesting of shellfish in
18 commercial quantities.
19 (2) The area leased must not contain a natural
20 shellfish bed.
21 (3) Cultivation of shellfish in the leased area will be
22 compatible with lawful utilization by the public of
23 other marine and estuarine resources. Other public
24 uses which may be considered include, but are not
25 limited to, navigation, fishing and recreation.

1 (4) Cultivation of shellfish in the leased area will
2 not impinge upon the rights of riparian owners.
3 (5) The area leased must not include an area designated
4 for inclusion in the Department's Shellfish
5 Management Program.
6 (6) The area leased must not include an area which the
7 State Health Director has recommended be closed to
8 shellfish harvest by reason of pollution.

9 (b) The ~~Marine Fisheries Commission Secretary~~ may delete any
10 part of an area proposed for lease or may condition a lease to
11 protect the public interest with respect to the factors
12 enumerated in subsection (a) of this section. The ~~Marine~~
13 ~~Fisheries Commission Secretary~~ may not grant a new lease in an
14 area heavily used for recreational purposes.

15 (c) No person, including a corporate entity, or single family
16 unit may acquire and hold by lease, lease renewal, or purchase
17 more than 50 acres of public bottoms under shellfish cultivation
18 leases.

19 (d) Any person desiring to apply for a lease must make written
20 application to the Secretary on forms prepared by the Department
21 containing such information as deemed necessary to determine the
22 desirability of granting or not granting the lease requested.
23 Except in the case of renewal leases, the application must be
24 accompanied by a map or diagram made at the expense of the
25 applicant, showing the area proposed to be leased.

26 The map or diagram must conform to standards prescribed by the
27 Secretary concerning accuracy of map or diagram and the amount of
28 detail that must be shown. If on the basis of the application
29 information and map or diagram the Secretary deems that granting
30 the lease would benefit the shellfish culture of North Carolina,
31 the Secretary, in the case of initial lease applications, must
32 order an investigation of the bottom proposed to be leased. The
33 investigation is to be made by the Secretary or his authorized
34 agent to determine whether the area proposed to be leased is
35 consistent with the standards in subsection (a) and any other
36 applicable standards under this Article and the rules of the
37 Marine Fisheries Commission. In the event the Secretary finds the
38 application inconsistent with the applicable standards, the
39 Secretary shall recommend that the application be denied or that
40 a conditional lease be issued which is consistent with the
41 applicable standards. In the event the Secretary authorizes
42 amendment of the application, the applicant must furnish a new
43 map or diagram meeting requisite standards showing the area
44 proposed to be leased under the amended application. At the time

1 of making application for an initial lease, the applicant must
2 pay a filing fee of one hundred dollars (\$100.00).

3 (e) The area of bottom applied for in the case of an initial
4 lease or amended initial lease must be as compact as possible,
5 taking into consideration the shape of the body of water, the
6 consistency of the bottom, and the desirability of separating the
7 boundaries of a leasehold by a sufficient distance from any known
8 natural shellfish bed to prevent the likelihood of disputes
9 arising between the leaseholder and members of the public taking
10 shellfish from the natural bed.

11 (f) Within a reasonable time after receipt of an application
12 that complies with subsection (d), the Secretary shall notify the
13 applicant whether he recommends approval, disapproval, or
14 modification of the lease application. In the event the Secretary
15 recommends approval or a modification to which the applicant
16 agrees, the Secretary shall conduct a public hearing in the
17 county where the proposed leasehold lies. The Secretary must
18 publish at least two notices of the intention to lease in a
19 newspaper of general circulation in the county in which the
20 proposed leasehold lies. The first publication must precede the
21 public hearing by more than 20 days; the second publication must
22 follow the first by seven to 11 days. The notice of intention to
23 lease must contain a sufficient description of the area of the
24 proposed leasehold that its boundaries may be established with
25 reasonable ease and certainty and must also contain the date,
26 hour and place of the hearing. The Secretary's recommendation of
27 disapproval shall become the final agency decision of on the
28 application unless the applicant requests in writing initiates a
29 contested case by filing a petition under G.S. 150B-23 within 20
30 days of notice of such action an administrative hearing before
31 the Marine Fisheries Commission action.

32 (g) Protests to the granting of a proposed lease shall be made
33 either in writing under oath prior to the public hearing held by
34 the Secretary or by testimony under oath during the public
35 hearing. After consideration of the protests public comment
36 received and any additional investigations he orders to evaluate
37 the protests, comments, the Secretary shall send to notify the
38 applicant and protesting parties in person or by certified or
39 registered mail of his final recommendation decision on the lease
40 application. The Secretary shall also notify persons who
41 submitted comments at the public hearing and requested notice of
42 the lease decision. An applicant who is dissatisfied with the
43 Secretary's decision may commence a contested case by filing a
44 petition under G.S. 150B-23 within 20 days after receiving the

1 Secretary's notice of his decision, as may other persons meeting
2 the requirements of G.S. 150B-23. In the event the Secretary's
3 final recommendation decision is a modification to which the
4 applicant agrees, the lease applicant must furnish an amended map
5 or diagram before the Secretary's final recommendation can be
6 presented to the Marine Fisheries Commission. lease can be issued
7 by the Secretary. In the event the Secretary's final
8 recommendation is inconsistent with a protest, the person filing
9 the protest may request in writing within 20 days of notice of
10 such action an administrative hearing before the Marine Fisheries
11 Commission. The Secretary's final recommendation of disapproval
12 decision disapproving an application shall become the final
13 agency decision of on the application unless the applicant
14 requests in writing initiates a contested case by filing a
15 petition under G.S. 150B-23 within 20 days of notice of such
16 action an administrative hearing before the Marine Fisheries
17 Commission. action.

18 (h) The Secretary shall present all lease applications
19 recommended for approval to the Marine Fisheries Commission for
20 final determination. In addition to his final recommendation, the
21 Secretary shall present the official record of the application as
22 developed pursuant to the requirements of this action. The
23 applicants and persons who protested the application shall be
24 given an opportunity to present oral and written arguments based
25 on the official record. Unless the Marine Fisheries Commission,
26 in its discretion, refers the matter for an administrative
27 hearing, the Marine Fisheries Commission shall determine all
28 lease applications presented by the Secretary during the public
29 meetings when the matter is presented. The Marine Fisheries
30 Commission, Secretary, in its his discretion, may lease or
31 decline to lease public bottoms in accordance with its his duty
32 to conserve the marine and estuarine resources of the State.

33 More than 20 days prior to an administrative hearing conducted
34 pursuant to this section, the Secretary must publish notice of
35 the hearing in a newspaper of general circulation in the county
36 where the proposed leasehold lies. The hearing shall be conducted
37 in the county where the proposed leasehold lies. Protests to the
38 granting of the proposed lease may be made during the
39 administrative hearing by parties to the hearing, intervening
40 parties, and witnesses for parties. When administrative hearings
41 have been conducted pursuant to this section, the Marine
42 Fisheries Commission shall determine the lease applications
43 during the public meeting when the proposal for decision is
44 presented by the hearing officer(s).

1 (i) After a lease application is approved by the ~~Marine~~
2 ~~Fisheries Commission, Secretary,~~ the applicant shall submit to
3 the Secretary a survey of the area approved for leasing and
4 define the bounds of the area approved for leasing with markers
5 in accordance with the rules of the Commission. The survey shall
6 conform to standards prescribed by the Secretary concerning
7 accuracy of survey and the amount of detail to be shown. When an
8 acceptable survey is submitted, the boundaries are marked and all
9 fees and rents due in advance are paid, the Secretary shall
10 execute the lease on forms approved by the Attorney General. If
11 ~~the applicant and the Secretary are unable to agree that the area~~
12 ~~approved for lease is that shown in the survey, the Secretary~~
13 ~~shall report the matter with reasonable dispatch to the Marine~~
14 ~~Fisheries Commission for resolution.~~ The Secretary is authorized,
15 with the approval of the lessee, to amend an existing lease by
16 reducing the area under lease or by combining contiguous leases
17 without increasing the total area leased.

18 (j) Initial leases begin upon the issuance of the lease by the
19 Secretary and expire at noon on the first day of April following
20 the tenth anniversary of the granting of the lease. Renewal
21 leases are issued for a period of 10 years effective from the
22 time of expiration of the previous lease. At the time of making
23 application for renewal of a lease, the applicant must pay a
24 filing fee of fifty dollars (\$50.00). The rental for initial
25 leases is one dollar (\$1.00) per acre for all leases entered into
26 before July 1, 1965, and for all other leases until noon on the
27 first day of April following the first anniversary of the lease.
28 Thereafter, for initial leases entered into after July 1, 1965,
29 and from the beginning for renewals of leases entered into after
30 said date, the rental is five dollars (\$5.00) per acre per year.
31 Rental must be paid annually in advance prior to the first day of
32 April each year. Upon initial granting of a lease, the pro rata
33 amount for the portion of the year left until the first day of
34 April must be paid in advance at the rate of one dollar (\$1.00)
35 per acre per year; then, on or before the first day of April
36 next, the lessee must pay the rental for the next full year.

37 (k) Except as restricted by this Subchapter, leaseholds granted
38 under this section are to be treated as if they were real
39 property and are subject to all laws relating to taxation, sale,
40 devise, inheritance, gift, seizure and sale under execution or
41 other legal process, and the like. Leases properly acknowledged
42 and probated are eligible for recordation in the same manner as
43 instruments conveying an estate in real property. Within 30 days
44 after transfer of beneficial ownership of all or any portion of

1 or interest in a leasehold to another, the new owner must notify
2 the Secretary of such fact. Such transfer is not valid until
3 notice is furnished the Secretary. In the event such transferee
4 is a nonresident, the Secretary must initiate proceedings to
5 terminate the lease.

6 (1) Upon receipt of notice by the Secretary of any of the
7 following occurrences, he must commence action to terminate the
8 leasehold:

- 9 (1) Failure to pay the annual rent in advance.
- 10 (2) Failure to file information required by the
11 Secretary upon annual remittance of rental or
12 filing false information on the form required to
13 accompany the annual remittance of rental.
- 14 (3) Failure by new owner to report a transfer of
15 beneficial ownership of all or any portion of or
16 interest in the leasehold.
- 17 (4) Failure to mark the boundaries in the leasehold and
18 to keep them marked as required in the rules of the
19 Marine Fisheries Commission.
- 20 (5) Failure to utilize the leasehold on a continuing
21 basis for the commercial production of shellfish.
- 22 (6) Transfer of all or part of the beneficial ownership
23 of a leasehold to a nonresident.
- 24 (7) Substantial breach of compliance with the
25 provisions of this Article or of rules of the
26 Marine Fisheries Commission governing use of the
27 leasehold.

28 The Marine Fisheries Commission is authorized to make rules
29 defining commercial production of shellfish, based upon the
30 productive potential of particular areas climatic or biological
31 conditions at particular areas or particular times, availability
32 of seed shellfish, availability for purchase by lessees of shells
33 or other material to which oyster spat may attach, and the like.
34 Commercial production may be defined in terms of planting effort
35 made as well as in terms of quantities of shellfish harvested.
36 Provided, however, that if a lessee has made a diligent effort to
37 effectively and efficiently manage his lease according to
38 accepted standards and practices in such management, and because
39 of reasons beyond his control, such as acts of God, such lessee
40 has not and cannot meet the requirements set out by the Marine
41 Fisheries Commission under the provisions of this paragraph of
42 this subsection, his leasehold shall not be terminated under
43 subdivision (5) of this subsection.

1 (m) In the event the leaseholder takes steps within 30 days to
2 remedy the situation upon which the notice of intention to
3 terminate was based and the Secretary is satisfied that
4 continuation of the lease is in the best interests of the
5 shellfish culture of the State, the Secretary may discontinue
6 termination procedures. Where there is no discontinuance of
7 termination procedures, the leaseholder may appeal to the Marine
8 Fisheries Commission, initiate a contested case by filing a
9 petition under G.S. 150B-23 within 30 days of receipt of notice
10 of intention to terminate. The Secretary shall make the final
11 agency decision of all lease terminations. Where there is no
12 appeal, or where an appeal does not prevail, the leaseholder does
13 not initiate a contested case, or the Secretary's final decision
14 upholds termination, the Secretary must send a final letter of
15 termination to the leaseholder. The final letter of termination
16 may not be mailed sooner than 30 days after receipt by the
17 leaseholder of the Secretary's notice of intention to terminate.
18 terminate, or of the Secretary's final agency decision, as
19 appropriate. The lease is terminated effective at midnight on the
20 day the final notice of termination is served on the leaseholder.
21 The final notice of termination may not be issued pending hearing
22 of any appeal by the Marine Fisheries Commission. a contested
23 case initiated by the leaseholder.

24 Service of any notice required in this subsection may be
25 accomplished by certified mail, return receipt requested;
26 personal service by any law-enforcement officer; or upon the
27 failure of these two methods, publication. Service by publication
28 shall be accomplished by publishing such notices in a newspaper
29 of general circulation within the county where the lease is
30 located for at least once a week for three successive weeks. The
31 format for notice by publication shall be approved by the
32 Attorney General.

33 (n) Upon final termination of any leasehold, the bottom in
34 question is thrown open to the public for use in accordance with
35 laws and rules governing use of public grounds generally. Within
36 30 days of final termination of the leasehold, the former
37 leaseholder shall remove all abandoned markers denominating the
38 area of the leasehold as a private bottom. The State may, after
39 10 days' notice to the owner of the abandoned markers thereof,
40 remove the abandoned structure and have the area cleaned up. The
41 cost of such removal and cleanup shall be payable by the owner of
42 the abandoned markers and the State may bring suit to recover the
43 costs thereof.

1 (o) Every year between January 1 and February 15 the Secretary
2 must mail to all leaseholders a notice of the annual rental due
3 and include forms designed by him for determining the amount of
4 shellfish or shells planted on the leasehold during the preceding
5 calendar year, and the amount of harvest gathered. Such forms may
6 contain other pertinent questions relating to the utilization of
7 the leasehold in the best interests of the shellfish culture of
8 the State, and must be executed and returned by the leaseholder
9 with the payment of his rental. Any leaseholder or his agent
10 executing such forms for him who knowingly makes a false
11 statement on such forms is guilty of a misdemeanor punishable in
12 the discretion of the court.

13 (p) All leases and renewal leases granted after the effective
14 date of this Article are made subject to this Article and to
15 reasonable amendment of governing statutes, rules of the Marine
16 Fisheries Commission, and requirements imposed by the Secretary
17 or his agents in regulating the use of the leasehold or in
18 processing applications of rentals. This includes such statutory
19 increase in rentals as may be necessitated by changing conditions
20 and refusal to renew lease after expiration, in the discretion of
21 the Marine Fisheries Commission. Secretary. No increase in
22 rentals, however, may be given retroactive effect.

23 The General Assembly declares it to be contrary to public
24 policy to the oyster and clam bottoms which were leased prior to
25 January 1, 1966, and which are not being used to produce oysters
26 and clams in commercial quantities to continue to be held by
27 private individuals, thus depriving the public of a resource
28 which belongs to all the people of the State. Therefore, when the
29 Secretary determines, after due notice to the lessee, and after
30 opportunity for the lessee to be heard, that oysters or clams are
31 not being produced in commercial quantities, due to the lessee's
32 failure to make diligent effort to produce oysters and clams in
33 commercial quantities, the Secretary may decline to renew, at the
34 end of the current term, any oyster or clam bottom lease which
35 was executed prior to January 1, 1966. The lessee may appeal the
36 denial of the Secretary to renew the lease to the Marine
Fisheries Commission in which event the lessee shall be granted
38 an opportunity to be heard, de novo, by the Marine Fisheries
39 Commission and by initiating a contested case pursuant to G.S.
40 150B-23. In such contested cases, the burden of proof, by the
41 greater weight of the evidence, shall be on the lessee. The
42 Marine Fisheries Commission, by majority vote, may affirm or
43 reverse the action of the Secretary. No appeal shall be allowed
44 from the action of the Marine Fisheries Commission. Secretary.

1 (q) Repealed by Session Laws 1983, c. 621, s. 16, effective
2 July 1, 1983."

3 Sec. 2. G.S. 113-202.1 reads as rewritten:

4 "§ 113-202.1. Water column leases for aquaculture.

5 (a) To increase the productivity of leases for shellfish
6 culture issued under G.S. 113-202, the Marine Fisheries
7 Commission Secretary may amend shellfish cultivation leases to
8 authorize use of the water column superjacent to the leased
9 bottom under the terms of this section when it he determines the
10 public interest will benefit from amendment of the leases.
11 Leases with water column amendments must produce shellfish in
12 commercial quantities at four times the minimum production rate
13 of leases issued under G.S. 113-202; or any higher quantity
14 required by the Marine Fisheries Commission through duly adopted
15 rules.

16 (b) Suitable areas for the authorization of water column use
17 shall meet the following minimum standards:

- 18 (1) Aquaculture use of the leased area must not
19 significantly impair navigation;
- 20 (2) The leased area must not be within a navigation
21 channel marked or maintained by a state or federal
22 agency;
- 23 (3) The leased area must not be within an area
24 traditionally used and available for fishing or
25 hunting activities incompatible with the activities
26 proposed by the leaseholder, such as trawling or
27 seining;
- 28 (4) Aquaculture use of the leased area must not
29 significantly interfere with the exercise of
30 riparian rights by adjacent property owners
31 including access to navigation channels from piers
32 or other means of access; and
- 33 (5) Any additional standards, established by the
34 Commission in duly adopted rules, to protect the
35 public interest in coastal fishing waters.

36 (c) The Commission Secretary shall not amend shellfish
37 cultivation leases to authorize use of the water column unless:

- 38 (1) The leaseholder submits an application, accompanied
39 by a nonrefundable application fee of one hundred
40 dollars (\$100.00), which conforms to the standards
41 for lease applications in G.S. 113-202(d) and the
42 duly adopted rules of the Commission;
- 43 (2) The proposed amendment has been noticed consistent
44 with G.S. 113-202(f);

1 (3) Public hearings have been conducted consistent with
2 G.S. 113-202(g);
3 (4) The aspects of the proposals which require use and
4 dedication of the water column have been documented
5 and are recognized by the Commission Secretary as
6 commercially feasible forms of aquaculture which
7 will enhance shellfish production on the leased
8 area;
9 (5) It is not feasible to undertake the aquaculture
10 activity outside of coastal fishing waters; and
11 (6) The authorized water column use has the least
12 disruptive effect on other public trust uses of the
13 waters of any available technology to produce the
14 shellfish identified in the proposal.

15 (d) Amendments of shellfish cultivation leases to authorize
16 use of the water column are issued for a period of five years or
17 the remainder of the term of the lease, whichever is shorter.
18 The annual rental for water column amendments is five hundred
19 dollars (\$500.00) per acre, prorated. The rental is in addition
20 to that required in G.S. 113-202.

21 (e) Amendments of shellfish cultivation leases to authorize
22 use of the water column are subject to termination in accordance
23 with the procedures established in G.S. 113-202 for the
24 termination of shellfish cultivation leases. Additionally, such
25 amendments may be terminated for unauthorized or unlawful
26 interference with the exercise of public trust rights by the
27 leaseholder, agents and employees of the leaseholder.

28 (f) Amendments of shellfish cultivation leases to authorize
29 use of the water column are not transferrable except when the
30 Commission Secretary approves the transfer after public notice
31 and hearing consistent with subsection (c) of this section.

32 (g) After public notice and hearing consistent with subsection
33 (c) of this section, the Commission Secretary may renew an
34 amendment, in whole or in part, when the leaseholder has produced
35 commercial quantities of shellfish and has otherwise complied
36 with the rules of the Commission. Renewals may be denied or
37 reduced in scope when the public interest so requires. Appeal of
38 renewal decisions shall be conducted in accordance with G.S. 113-
39 202(p). Renewals are subject to the lease terms and rates
40 established in subsection (d) of this section.

41 (h) The procedures and requirements of G.S. 113-202 shall
42 apply to proposed amendments or amendments of shellfish
43 cultivation leases considered under this section except more

1 specific provisions of this section control conflicts between the
2 two sections.

3 (i) To the extent required by demonstration or research
4 aquaculture development projects, the Commission Secretary may
5 amend existing leases and issue leases that authorize use of the
6 bottom and the water column. Demonstration or research
7 aquaculture development projects may be authorized for two years
8 with no more than one renewal and when the project is proposed or
9 formally sponsored by an educational institution which conducts
10 research or demonstration of aquaculture. Production of
11 shellfish with a sales value in excess of one thousand dollars
12 (\$1,000) per acre per year shall constitute commercial
13 production. Demonstration or research aquaculture development
14 projects shall be exempt for the rental rate in subsection (d) of
15 this section unless commercial production occurs as a result of
16 the project."

17 Sec. 3. G.S. 113-202.2 reads as rewritten:

18 "§ 113-202.2. Water column leases for aquaculture for perpetual
19 franchises.

20 (a) To increase the productivity of shellfish grants and
21 perpetual franchises for shellfish culture recognized under G.S.
22 113-206, the Marine Fisheries Commission Secretary may lease the
23 water column superjacent to such grants or perpetual franchises
24 (hereinafter 'perpetual franchises') under the terms of this
25 section when it determines the public interest will benefit from
26 the lease. Perpetual franchises with water column leases must
27 produce shellfish in commercial quantities at four times the
28 minimum production rate of leases issued under G.S. 113-202, or
29 any higher quantity required by the Marine Fisheries Commission
30 by rule.

31 (b) Suitable areas for the authorization of water column use
32 shall meet the following minimum standards:

- 33 (1) Aquaculture use of the leased water column area
34 must not significantly impair navigation;
- 35 (2) The leased water column area must not be within a
36 navigation channel marked or maintained by a State
37 or federal agency;
- 38 (3) The leased water column area must not be within an
39 area traditionally used and available for fishing
40 or hunting activities incompatible with the
41 activities proposed by the perpetual franchise
42 holder, such as trawling or seining;
- 43 (4) Aquaculture use of the leased water column area
44 must not significantly interfere with the exercise

of riparian rights by adjacent property owners including access to navigation channels from piers or other means of access;

- (5) The leased water column area may not exceed 10 acres for grants or perpetual franchises recognized pursuant to G.S. 113-206;
- (6) The leased water column area must not extend more than one-third of the distance across any body of water or into the channel third of any body of water for grants or perpetual franchises recognized pursuant to G.S. 113-206; and
- (7) Any additional rules to protect the public interest in coastal fishing waters adopted by the Commission.

15 (c) The Commission Secretary shall not lease the water column
16 superjacent to oyster or other shellfish grants or perpetual
17 franchises unless:

- (1) The perpetual franchise holder submits an application, accompanied by a nonrefundable application fee of one hundred dollars (\$100.00), which conforms to the standards for lease applications in G.S. 113-202(d) and rules adopted by the Commission;
- (2) Notice of the proposed lease has been given consistent with G.S. 113-202(f);
- (3) Public hearings have been conducted consistent with G.S. 113-202(g);
- (4) The aspects of the proposals which require use and dedication of the water column have been documented and are recognized by the Commission Secretary as commercially feasible forms of aquaculture which will enhance shellfish production;
- (5) It is not feasible to undertake the aquaculture activity outside of coastal fishing waters; and
- (6) The authorized water column use has the least disruptive effect on other public trust uses of the waters of any available technology to produce the shellfish identified in the proposal.

39 (d) Water column leases to perpetual franchises shall be
40 issued for a period of five years and may be renewed pursuant to
41 subsection (g) of this section. The annual rental for water
42 column leases shall be five hundred dollars (\$500.00) per acre,
43 prorated, or the then current renewal rate, whichever is greater.

1 (e) Water column leases to perpetual franchises may be
2 terminated for unauthorized or unlawful interference with the
3 exercise of public trust rights by the leaseholder or his agents
4 or employees.

5 (f) Water column leases to perpetual franchises are not
6 transferrable except when the Commission Secretary approves the
7 transfer after public notice and hearing consistent with G.S.
8 113-202(f) and (g).

9 (g) After public notice and hearing consistent with G.S.
10 113-202(f) and (g), the Commission Secretary may renew a water
11 column lease, in whole or in part, if the leaseholder has
12 produced commercial quantities of shellfish and has otherwise
13 complied with this section and the rules of the Commission.
14 Renewals may be denied or reduced in scope when the public
15 interest so requires. Appeal of renewal decisions shall be
16 conducted in accordance with G.S. 113-202(p). Renewals are
17 subject to the lease terms and rates set out in subsection (d) of
18 this section.

19 (h) The procedures and requirements of G.S. 113-202 shall
20 apply to proposed water column leases or water column leases to
21 perpetual franchises considered under this section except that
22 more specific provisions of this section control conflicts
23 between the two sections.

24 (i) Demonstration or research aquaculture development projects
25 may be authorized for two years with no more than one renewal and
26 when the project is proposed or formally sponsored by an
27 educational institution which conducts aquaculture research or
28 demonstration projects. Production of shellfish with a sales
29 value in excess of one thousand dollars (\$1,000) per acre per
30 year shall constitute commercial production. Demonstration or
31 research aquaculture development projects shall be exempt from
32 the rental rate in subsection (d) of this section unless
33 commercial production occurs as a result of the project."

34 Sec. 4. G.S. 143B-289.4(2) reads as rewritten:

35 "(2) The Marine Fisheries Commission shall have the
36 power and duty to establish standards and adopt
37 rules:

38 (a) Implementing the provisions of Subchapter IV
39 of Chapter 113 as provided in G.S. 113-134 of
40 the General Statutes of the State of North
41 Carolina;

- (b) For the disposition of confiscated property as set forth in G.S. 113-137;
- (c) Governing all license requirements and taxes prescribed in Chapter 113, Article 14;
- (d) Governing the importation and exportation of fish, and equipment that may be used in taking or processing fish, as necessary to enhance the conservation of marine and estuarine resources of North Carolina as provided in G.S. 113-160;
- (e) Governing the possession, transportation and disposition of seafood, as provided in G.S. 113-164;
- (f) Regarding the disposition of the young of edible fish, as provided by G.S. 113-185;
- (g) ~~Regarding the leasing of public grounds for aquaculture, including oysters and clam production, as provided in G.S. 113-202;~~
- (h) Governing utilization of private fisheries, as provided in G.S. 113-205;
- (i) Imposing further restrictions upon the throwing of fish offal in any coastal fishing waters, as provided in G.S. 113-265;
- (j) Governing the location and utilization of artificial reefs in coastal waters; and
- (k) Regulating the placement of nets and other sports or commercial fishing apparatus in coastal fishing waters with regard to navigational or recreational safety as well as from a conservation standpoint."

Sec. 5. This act is effective upon ratification.

DRAFT
FOR REVIEW ONLY

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

S/H

D

S/H93-RD-002/Modify MFC
THIS IS A DRAFT 4-DEC-92 10:14:53

Short Title: Modify Marine Fisheries Commission.

(Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE GENERAL STATUTES TO AUTHORIZE THE GOVERNOR TO
3 APPOINT A SPOUSE OF A COMMERCIAL FISHERMAN TO SERVE ON THE
4 MARINE FISHERIES COMMISSION IN THE PLACE OF THE COMMERCIAL
5 FISHERMAN.
6 The General Assembly of North Carolina enacts:
7 Section 1. G.S. 143B-289.5(a) reads as rewritten:
8 "(a) Members, Selection. -- The Marine Fisheries Commission
9 shall consist of 15 members appointed by the Governor. The
10 Governor shall select the members so that all the following
11 interests are represented:
12 (1) Four who shall at the time of appointment be
13 actively connected with and have experience in
14 commercial fishing, as demonstrated by deriving at
15 least fifty percent (50%) of earned income from
16 taking and selling food resources living in coastal
17 fishing waters; waters. The spouse of a commercial
18 fisherman may be appointed under this subdivision
19 provided that either spouse meets the criteria set
20 forth herein;
21 (2) Four who shall at the time of appointment be
22 actively connected with and have experience in
23 sport fishing;

1 (3) Three who shall at the time of appointment have
2 special training and expertise in marine or
3 estuarine sciences or the environment affecting the
4 marine and estuarine resources;
5 (4) Two who shall at the time of appointment be
6 actively connected with and have experience in
7 seafood processing and distribution as demonstrated
8 by deriving at least fifty percent (50%) of earned
9 income from activities involving processing and
10 distributing seafood;
11 (5) Two at large who shall at the time of appointment
12 have knowledge of and experience related to the
13 subjects and persons regulated by the Commission.
14 In making appointments to and filling vacancies upon the
15 Commission, the Governor shall give due consideration to securing
16 appropriate representation of women and minorities.
17 Sec. 2. This act is effective upon ratification.

DRAFT
FOR REVIEW ONLY

DRAFT
FOR REVIEW ONLY

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

S/H

D

93-RD-018
THIS IS A DRAFT 4-DEC-92 12:21:56

Short Title: Modify Water Column Leases. (Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO MODIFY THE WATER COLUMN LEASES IN ARTICLE 16 OF CHAPTER
3 113 OF THE GENERAL STATUTES.
4 The General Assembly of North Carolina enacts:
5 Section 1. G.S. 113-202.1(d) reads as rewritten:
6 "(d) Amendments of shellfish cultivation leases to authorize
7 use of the water column are issued for a period of five years or
8 the remainder of the term of the lease, whichever is shorter.
9 The annual rental for water column amendments is one hundred
10 dollars (\$100.00) per acre for the first three years of the
11 initial lease and five hundred dollars (\$500.00) per acre,
12 prorated acre for each year of the remainder of the term of the
13 lease, prorated. The annual rental for subsequent water column
14 leases is five hundred dollars (\$500.00) per acre. The rental is
15 in addition to that required in G.S. 113-202.
16 Sec. 2. This act becomes effective upon ratification
17 and applies to leases entered into on or after the effective date
18 of this act.



DRAFT
FOR REVIEW ONLY
GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1993

S/H

D

93-RD-017(2)
THIS IS A DRAFT 29-DEC-92 13:30:42

Short Title: Transfer Aquaculture Licenses/Agric. (Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO TRANSFER AUTHORITY FROM THE WILDLIFE RESOURCES
3 COMMISSION TO THE DEPARTMENT OF AGRICULTURE TO REGULATE THE
4 PRODUCTION AND SALE OF COMMERCIALLY RAISED FRESH WATER FISH AND
5 FRESH WATER CRUSTACEAN SPECIES.
6 The General Assembly of North Carolina enacts:
7 Section 1. G.S. 106-158 reads as rewritten:
8 "§ 106-758. Definitions.
9 In addition to the definitions in G.S. 113-129, the following
10 definitions shall apply as used in this Article,
11 (1) 'Aquaculture' means the propagation and rearing of
12 aquatic species in controlled or selected
13 environments, including, but not limited to, ocean
14 ranching;
15 (2) 'Aquaculture facility' means any land, structure or
16 other appurtenance that is used for aquaculture,
17 including, but not limited to, any laboratory,
18 hatchery, rearing pond, raceway, pen, incubator, or
19 other equipment used in aquaculture;
20 (3) 'Aquatic species' means any species of finfish,
21 mollusk, crustacean, or other aquatic invertebrate,
22 amphibian, reptile, or aquatic plant, and
23 including, but not limited to, "fish" and "fishes"
24 as defined in G.S. 113-129(f); 113-129(7);

1 (4) 'Commissioner' means the Commissioner of
2 Agriculture;
3 (5) 'Department' means the North Carolina Department of
4 Agriculture."

5 Sec. 2. Article 63 of Chapter 106 is amended by adding
6 the following new sections to read:

7 " **S106-761 Aquaculture Facility Registration and Licensing.**

8 (a) Authority. The North Carolina Department of Agriculture
9 shall regulate the production and sale of commercially raised
10 fresh water fish and fresh water crustacean species. The Board
11 of Agriculture shall promulgate rules for the registration of
12 facilities for the production and sale of fresh water
13 aquaculturally raised species. The Board may prescribe standards
14 under which commercially reared fish may be transported,
15 possessed, bought and sold. The Department of Agriculture and
16 Board of Agriculture authority shall be limited to commercially
17 reared fish and shall not include authority over the wild fishery
18 resource which is managed under the authority of the North
19 Carolina Wildlife Resources Commission. The authority granted
20 herein to regulate facilities licensed pursuant to this section
21 does not authorize the Department of Agriculture or the Board of
22 Agriculture to promulgate rules that 1) are inconsistent with
23 rules adopted by any other State agency; or 2) exempt such
24 facilities from the rules adopted by any other State agency.

25 (b) Species subject to this Section. The following species are
26 exempt from special restrictions on introduction of exotic
27 species disease promulgated by the Wildlife Resources Commission
28 except to prevent. All other species are prohibited from
29 propagation and production unless the applicant for the permit
30 first obtains written permission from the Wildlife Resources
31 Commission.

32	1. Bluegill	<u>Lepomis macrochirus</u>
33	2. Redear Sunfish	<u>Lepomis microlophus</u>
34	3. Redbreast Sunfish	<u>Lepomis auritus</u>
35	4. Green Sunfish	<u>Lepomis cyanellus</u>
36	5. Any hybrids using above species of the genus Lepomis	<u>Pomoxis nigromaculatus</u>
37	6. Black Crappie	<u>Pomoxis annularis</u>
38	7. White Crappie	<u>Micropterus salmoides (northern strain)</u>
39	8. Largemouth Bass	<u>Micropterus dolomieu</u>
40	9. Smallmouth Bass	<u>Ictalurus catus</u>
41	10. White Catfish	<u>Ictalurus punctatus</u>
42	11. Channel Catfish	<u>Notemigonus crysoleucas</u>
43	12. Golden Shiner	

1	<u>13. Fathead Minnow</u>	<u>Pimephales promelas</u>
2	<u>14. Goldfish</u>	<u>Carassius auratus</u>
3	<u>15. Rainbow Trout</u>	<u>Oncorhynchus mykiss</u>
4	<u>16. Brown Trout</u>	<u>Salmo trutta</u>
5	<u>17. Brook Trout</u>	<u>Salvelinus fontinalis</u>
6	<u>18. Common Carp</u>	<u>Cyprinus carpio</u>
7	<u>19. Crayfish</u>	<u>Procambarus species</u>

8 (c) Hybrid striped bass. The hybrid striped bass shall be
9 subject to rules adopted by the Board of Agriculture in all river
10 basins of the State except for the Neuse, Roanoke and Tar/Pamlico
11 River basins. In these basins production, propagation and
12 holding facilities shall comply with additional escapement
13 prevention measures as prescribed by the Wildlife Resources
14 Commission.

15 (d) Aquaculture Propagation and Production Facility License.
16 The Board of Agriculture may, by rule, authorize and license the
17 operation of fish hatcheries and production facilities for
18 species of fish listed in subsection (b) of this Section. The
19 Board may prescribe standards of operation, qualifications of
20 operators, and the conditions under which fish may be
21 commercially reared, transported, possessed, bought and sold.
22 Aquaculture Propagation and Production Licenses issued by the
23 North Carolina Department of Agriculture shall be valid for a
24 period of five years.

25 (e) Commercial Catchout Facility License.

26 (1) Commercial catchout facilities must be stocked
27 exclusively with hatchery reared fish obtained from
28 hatcheries approved by the Department of
29 Agriculture to prevent the introduction of
30 diseases. The Board of Agriculture may, by rule,
31 prescribe standards of operation and conditions
32 under which fish from such ponds may be taken,
33 transported, possessed, bought and sold.

34 (2) The Commercial Catchout Facility License shall be
35 valid for a period of five years. A pond owner or
36 operator licensed under this subsection shall be
37 authorized to sell fish taken by fishermen from the
38 pond to such fishermen. Fish sold at such
39 facilities shall be limited to those fish covered
40 under this Section.

41 (3) The holder of the Catchout Facility License shall
42 provide receipts to the purchasers of fish. The
43 receipt shall describe the species, number, total
44 weight and the location of the catchout facility.

1 (4) No fish taken from a Commercial Catchout Facility
2 may be resold by the purchasing angler for any
3 purpose.

4 (5) No fishing, special trout or other license shall be
5 required of anglers fishing in licensed commercial
6 catchout facilities.

7 (f) Holding Pond/Tank Permit. All facilities holding live
8 food or bait species for sale must obtain a Holding Pond/Tank
9 permit. Permits shall be valid for a period of two years and
10 shall only authorize possession of fish specified in this
11 Section. All fish held live for sale shall be kept in accordance
12 with rules promulgated by the Board of Agriculture. Possession
13 of an Aquaculture Propagation and Production Facility or
14 Commercial Catchout Facility License shall serve in lieu of a
15 Holding Pond/Tank permit for possession both on and off their
16 facilities premises. No permit shall be required for holding
17 lobsters for sale.

18 (g) Possession of species other than those listed in
19 subsection (b) of this Section or as authorized in writing by the
20 Wildlife Resources Commission shall be a violation which shall
21 result in the revocation of the Aquaculture Propagation and
22 Production Facility or Commercial Catchout Facility License until
23 such time that proper authorization is received from the Wildlife
24 Resources Commission or the unauthorized species is removed from
25 the facility. In the event of possession of unauthorized fish
26 species, the Wildlife Resources Commission may take further
27 regulatory action. The Department of Agriculture and the
28 Wildlife Resources Commission shall have authority to enter the
29 premises of such facilities to inspect for the possession of a
30 species other than those authorized in subsection (b) of this
31 Section or authorized by written permission of the Wildlife
32 Resources Commission.

33 (h) Nothing in this act shall apply to the aquarium or
34 ornamental trade in fish. The Wildlife Resources Commission may
35 by rule identify species for which possession in the State is
36 prohibited.

37 **"106-762 Fish Disease Management."**

38 (a) The North Carolina Department of Agriculture shall, with
39 the assistance of the Wildlife Resources Commission, develop and
40 implement a fish disease management plan to prevent the
41 introduction of fish diseases through aquaculture facilities
42 subject to the provisions and duly adopted rules of this Section
43 into the State.

1 (b) Release of Fish. It shall be unlawful to willfully
2 release domestically raised fish into the waters of the State,
3 other than in private ponds as defined by G.S. 113-129, without
4 written permission of the Wildlife Resources Commission, or the
5 Division of Marine Fisheries of the Department of Environment,
6 Health, and Natural Resources.

7 " §106-763 Fish Passage and Residual Stream Flow.

8 (a) Natural watercourses as designated by law or regulation
9 shall not be blocked with a stand, dam, weir, hedge or other
10 water diversion structure to supply an aquaculture facility that
11 in any way prevents or fails to maintain the free passage of
12 anadromous or indigenous fish.

13 (b) Residual flow in a natural watercourse below the point of
14 water withdrawal supplying an aquaculture operation shall be
15 sufficient to prevent destruction or serious diminution of
16 downstream fishery habitat and shall be consistent with rules
17 adopted by the Environmental Management Commission."

18 " §106-764 Violation. A person who violates this Act or a rule
19 of the Board of Agriculture adopted hereunder is guilty of a
20 misdemeanor punishable by a fine not to exceed five hundred
21 dollars (\$500.00) or imprisonment for not more than thirty (30)
22 days, or both.

23 Sec. 3. G.S. 113-273 reads as rewritten:

24 " § 113-273. Dealer licenses.

25 (a) 'Dealer' Defined; All Licenses Annual. -- As used in this
26 section, the word "dealer" includes all persons or individuals
27 required to be licensed under the terms of this section. Except
28 when indicated otherwise, dealer licenses are annual licenses
29 issued beginning January 1 each year running until the following
30 December 31.

31 (b) License Required; Rules Governing Licensee. -- Except as
32 otherwise provided, no person may engage in any activity for
33 which a dealer license is provided under this section without
34 first having procured a current and valid dealer license for that
35 activity. In implementing the provisions of this section, the
36 Wildlife Resources Commission may by rule govern every aspect of
37 the licensee's dealings in wildlife resources. Specifically,
38 these rules may require dealers to:

39 (1) Implement a system of tagging or otherwise
40 identifying and controlling species regulated under
41 the license and pay a reasonable fee, not to exceed
42 two dollars and twenty-five cents (\$2.25), for each
43 tag furnished by the Wildlife Resources Commission;

- 1 (2) Keep records and statistics in record books
2 furnished by the Wildlife Resources Commission, and
3 pay a reasonable charge to defray the cost of
4 furnishing the books;
- 5 (3) Be subject to inspection at reasonable hours and
6 audit of wildlife resources and pertinent records
7 and equipment;
- 8 (4) Make periodic reports;
- 9 (5) Post performance bonds payable to the Wildlife
10 Resources Commission conditioned upon faithful
11 compliance with provisions of law; and
- 12 (6) Otherwise comply with reasonable rules and
13 administrative requirements that may be imposed
14 under the authority of this section.

15 (c) Commercial Trout Pond License. -- As used in this
16 subsection, a "commercial trout pond" is a fish tank meeting
17 standards set by the Wildlife Resources Commission or an
18 artificial impoundment of three acres or less lying on private
19 land and not on a natural stream, but which may be supplied
20 through screened and regulated supply lines. A commercial trout
21 pond must be stocked exclusively with hatchery reared mountain
22 trout obtained from hatcheries approved by the Wildlife Resources
23 Commission. The Wildlife Resources Commission may by rule
24 prescribe qualifications of operators of commercial trout ponds,
25 standards of operation, and the conditions under which trout from
26 such ponds may be taken, transported, possessed, bought, and
27 sold. Commercial trout pond licenses issued by the Wildlife
28 Resources Commission are as follows:

- 29 (1) Commercial trout fishing pond license, twenty-five
30 dollars (\$25.00). Authorizes the responsible
31 licensed pond owner or operator to sell trout taken
32 by fishermen from the pond to such fishermen.
- 33 (2) Commercial trout holding pond license, five dollars
34 (\$5.00). Authorizes the responsible licensed pond
35 owner or operator to hold live trout for sale under
36 conditions prescribed by the Wildlife Resources
37 Commission. No person holding a fish propagation
38 license for trout under subsection (e) need also
39 procure this license.

40 (d) Repealed by Session Laws 1979, c. 830, s. 1.

41 (e) Fish Propagation License. -- The Wildlife Resources
42 Commission may by rule authorize and license the operation of
43 fish hatcheries for species of fish which may be found in inland
44 fishing waters. The Wildlife Resources Commission may prescribe

1 standards of operation, qualifications of operators, and the
2 conditions under which fish may be taken, transported, possessed,
3 bought, and sold. Fish propagation licenses issued by the
4 Wildlife Resources Commission are as follows:

5 (1) Trout propagation license, twenty-five dollars
6 (\$25.00). Authorizes artificial propagation and
7 sale of all species of freshwater trout permitted
8 under the rules of the Wildlife Resources
9 Commission in accordance with those rules.

10 (2) Restricted propagation license, twenty-five dollars
11 (\$25.00). Authorizes artificial propagation and
12 sale of species of fish other than trout designated
13 in the license, in accordance with governing rules
14 of the Wildlife Resources Commission.

15 (f) Fur-Dealer License. -- Except as otherwise provided in this
16 subsection, any individual in this State who deals in furs must
17 obtain an appropriate fur-dealer license. For the purposes of
18 this subsection, "dealing in furs" is engaging in the business of
19 buying or selling fur-bearing animals or other wild animals that
20 may lawfully be sold, the raw furs, pelts, or skins of those
21 animals, or the furs, pelts, or skins of wild animals which may
22 not themselves be sold but whose fur, pelt, or skin may lawfully
23 be sold. A hunter or trapper who has lawfully taken wild animals
24 whose fur, pelt, or skin is permitted to be sold under this
25 subsection is not considered a fur dealer if he exclusively sells
26 the animals or the furs, pelts, and skins, as appropriate, to
27 licensed fur dealers. All fur-dealer licenses are annual licenses
28 issued beginning July 1 each year running until the following
29 June 30. Fur-dealer licenses issued by the Wildlife Resources
30 Commission are as follows:

31 (1) Resident fur-dealer license, sixty dollars
32 (\$60.00). Authorizes an individual resident of the
33 State to deal in furs in accordance with the rules
34 of the Wildlife Resources Commission.

35 (2) Nonresident fur-dealer license, three hundred
36 dollars (\$300.00). Authorizes an individual within
37 the State to deal in furs in accordance with the
38 rules of the Wildlife Resources Commission.

39 (3) Fur-dealer station license, one hundred twenty
40 dollars (\$120.00). Authorizes a person or
41 individual to deal in furs at an established
42 location where fur dealings occur under the
43 supervision of a responsible individual manager
44 named in the license. Individual employees of the

1 business dealing in furs solely at the established
2 location under the supervision of the manager need
3 not acquire an individual license. Any employee who
4 also deals in furs outside the established location
5 must obtain the appropriate individual license.
6 Individuals dealing in furs at an established
7 location may elect to do so under their individual
8 licenses.

9 The Executive Director may administratively
10 provide for reissuance of a station license without
11 charge for the remainder of the year when either a
12 business continues at an established location under
13 a new supervising manager or the business changes
14 to a new location. Before reissuing the license,
15 however, the Executive Director must satisfy
16 himself that there is a continuation of essentially
17 the same business previously licensed and that any
18 new supervising manager meets the qualifications
19 imposed by rules of the Wildlife Resources
20 Commission. The supervising manager must file the
21 names of all employees of the business covered by a
22 fur-dealer station license, whether temporary or
23 permanent, including employees who process or skin
24 the animals.

25 The Executive Director must furnish supervising managers and
26 individual licensees with forms or record books for recording
27 required information as to purchase, sale, importation,
28 exportation, and other dealings, and make a reasonable charge to
29 cover the costs of any record books furnished. It is unlawful for
30 anyone dealing in furs to fail to submit reports required by
31 rules or reasonable administrative directives.

32 (g) Controlled Hunting Preserve Operator License. -- The
33 Wildlife Resources Commission is authorized by rule to set
34 standards for and to license the operation of controlled hunting
35 preserves operated by private persons. Controlled hunting
36 preserves are of two types: one is an area marked with
37 appropriate signs along the outside boundaries on which only
38 domestically raised game birds other than wild turkeys are taken;
39 the other is an area enclosed with a dog-proof fence on which
40 foxes may be hunted with dogs only. A controlled fox hunting
41 preserve operated for private use may be of any size; a
42 controlled hunting preserve operated for commercial purposes
43 shall be an area of not less than 500 acres or of such size as
44 set by regulation of the Wildlife Resources Commission, which

1 shall take into account differences in terrain and topography, as
2 well as the welfare of the foxes.

3 Operators of controlled fox hunting preserves may purchase live
4 foxes from licensed trappers who live-trap foxes during any open
5 season for trapping them and may, at any time, take live foxes
6 from their preserves for sale to other licensed operators. The
7 controlled hunting preserve operator license may be purchased for
8 a fee of fifty dollars (\$50.00), and is an annual license issued
9 beginning August 1 each year running until the following July 1.

10 (h) Game Bird Propagation License. -- No person may propagate
11 game birds in captivity or possess game birds for propagation
12 without first procuring a license under this subsection. The
13 Wildlife Resources Commission may by rule prescribe the
14 activities to be covered by the propagation license, which
15 species of game birds may be propagated, and the manner of
16 keeping and raising the birds, in accordance with the overall
17 objectives of conservation of wildlife resources. Except as
18 limited by this subsection, propagated game birds may be raised
19 and sold for purposes of propagation, stocking, food, or taking
20 in connection with dog training as authorized in G.S.
21 113-291.1(d). Migratory game bird operations authorized under
22 this subsection must also comply with any applicable provisions
23 of federal law and rules. The Wildlife Resources Commission may
24 impose requirements as to shipping, marking packages, banding,
25 tagging, or wrapping the propagated birds and other restrictions
26 designed to reduce the chance of illicit game birds being
27 disposed of under the cover of licensed operations. The Wildlife
28 Resources Commission may make a reasonable charge for any bands,
29 tags, or wrappers furnished propagators. The game bird
30 propagation license is issued by the Wildlife Resources
31 Commission upon payment of a fee of five dollars (\$5.00). It
32 authorizes a person or individual to propagate and sell game
33 birds designated in the license, in accordance with the rules of
34 the Wildlife Resources Commission, except:

35 (1) Wild turkey and ruffed grouse may not be sold for
36 food.
37 (2) Production and sale of pen-raised quail for food
38 purposes is under the exclusive control of the
39 Department of Agriculture. The Wildlife Resources
40 Commission, however, may regulate the possession,
41 propagation, and transportation of live pen-raised
42 quail.

43 Wild turkey acquired or raised under a game bird propagation
44 license shall be confined in a cage or pen approved by the

1 Wildlife Resources Commission and no such wild turkey shall be
2 released for any purpose or allowed to range free. It is a
3 misdemeanor punishable by a fine of not less than one hundred
4 dollars (\$100.00) in addition to such other punishment the court
5 may impose in its discretion to sell wild turkey or ruffed grouse
6 for food purposes, to sell quail other than lawfully acquired
7 pen-raised quail for food purposes, or to release or allow wild
8 turkey to range free.

9 (i) Furbearer Propagation License. -- No person may engage in
10 propagation in captivity or possess any species of furbearers for
11 propagation for the purpose of selling the animals or their pelts
12 for use as fur without first procuring a license under this
13 subsection. The furbearer propagation license is issued by the
14 Wildlife Resources Commission upon payment of a fee of
15 twenty-five dollars (\$25.00). It authorizes the propagation or
16 sale of the pelts or carcasses of the species of furbearing
17 animals named therein, including bobcats, opossums and raccoons,
18 or red and silver foxes (*Vulpes vulpes*), for use as fur. The
19 Wildlife Resources Commission may by rule prescribe the
20 activities covered by the license, the manner of keeping and
21 raising the animals and the manner of killing them prior to sale,
22 in accordance with overall objectives of conservation of wildlife
23 resources and humane treatment of wild animals raised in
24 captivity. The Wildlife Resources Commission may require tagging
25 of the pelts or carcasses of the animals prior to sale in
26 accordance with the provisions of G.S. 113-276.1(5) and G.S.
27 113-291.4(g). It is unlawful for any person licensed under this
28 subsection to sell any pelt or carcass of any furbearing animal
29 or fox to any other person who is not lawfully authorized to buy
30 and possess the same, or to sell or deliver a live specimen of
31 any such animal to any person who is not authorized to buy or
32 receive and to hold the animal in captivity.

33 (j) [Reserved.]

34 (k) Taxidermy License. -- Any individual who engages in
35 taxidermy involving wildlife for any compensation, including
36 reimbursement for the cost of materials, must first procure a
37 taxidermy license. This license is an annual license issued by
38 the Wildlife Resources Commission for ten dollars (\$10.00). The
39 Wildlife Resources Commission must require a licensee to keep
40 records concerning any wildlife taken or possessed by him; to
41 keep records of the names and addresses of persons bringing him
42 wildlife, the names and addresses of persons taking the wildlife
43 if different, and other information concerning the origin of the
44 wildlife; to inspect any applicable licenses or permits

1 pertaining to the taking and possession of wildlife brought to
2 him; to restrict him to taxidermy upon lawfully acquired
3 wildlife; and to keep other pertinent records. No taxidermist
4 subject to license requirements may sell any game or game fish in
5 which he deals except that a taxidermist may acquire a valid
6 possessory lien upon game or game fish under the terms of Chapter
7 44A of the General Statutes and, with a permit from the Executive
8 Director, may sell the game or game fish under the procedure
9 authorized in Chapter 44A. Wildlife acquired by a taxidermist is
10 deemed "personal property" for the purposes of Chapter 44A.

11 Sec. 4. G.S. 113-274(c)(3b) reads as rewritten:
12 ~~"(3b) Trout Sale Permit. Authorizes the sale at wholesale~~
13 ~~or retail of dead artificially propagated mountain trout~~
14 ~~for food purposes if the trout have been lawfully~~
15 ~~acquired from a hatchery approved by the Wildlife~~
16 ~~Resources Commission and are appropriately wrapped or~~
17 ~~otherwise identified as hatchery-reared trout as~~
18 ~~required by governing rules. No person who holds a~~
19 ~~license that authorizes the sale of trout need purchase~~
20 ~~this permit."~~

21 Sec. 5. This act becomes effective January 1, 1994.

